Export Control Terminology and Definitions:

Anything of value is broadly defined by the Foreign Corrupt Practices Act of 1977 and may include cash, gifts, payments of travel expenses, loans, charitable contributions, financial aid or scholarships, titles of honor and more, made to a foreign official.

Controlled technical data (based on the EAR definition) is an export or technology that is required for the development, production or use" of items on the Commerce Control List and items that have a dual-purpose. ITAR defines technical data as plans, diagrams, photos and other documentation used to build ITAR-controlled military gear.

Deemed export refers to the transfer/disclosure of any form (verbal, written, electronic, visual) within the U.S. or abroad of export-controlled items or information to a foreign national (anyone who is not a U.S. citizen or permanent resident). An export license may be required before export-controlled items or information can be shared abroad or on campus with foreign nationals participating or collaborating on research projects. These activities, in addition to others, may be restricted:

      a. Foreign scholars and/or students to participate in export-controlled research;
      b. The ability of Downstate researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are present;
      c. The ability of Downstate researchers to collaborate with foreign investigators, including restrictions on teaching foreign collaborators how to use export-controlled items in research (i.e. providing a "service");
      d. Sending research equipment abroad.

Deemed Export rule is an export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States.

Denied Parties List (see also Restricted Parties list) is a list of individuals and entities that have been denied export privileges and prohibit any dealings with these parties.

Dual-Use Goods is a term defined by the EAR as goods and technology designed for commercial purposes but which could be used by the military (i.e. computer, software, pathogens etc.) These goods are identified on the Commerce Control List (CCL). The dual-use regulations of EAR make an exception to export license requirements for a temporary export or reexport (less than 12 months from the date of initial shipment/hand-carry) of certain tangible items, software and technologies subject to regulation for professional use as long as specific criteria are met.

Effective Control is defined by the regulations as "retaining physical possession of an item or maintaining it in a secure environment such as a hotel safe or a locked or guarded facility."

Export Administration Regulations (EAR) are regulations administered through the **U.S. Department of Commerce through the Bureau of Industry and Security (BIS)**. These regulations control the export of dual-use goods not controlled by other regulations. The EAR defines "controlled technical data" as an export or technology that is required for the "development, production or use" of items on the Commerce Control List (CCL).

Export Control is the obligation to obtain an export license from the governmental regulatory body **before** "releasing" *controlled* technology to a foreign person and/or country.

Export-controlled information or material refers to any other information outside the definition of 'fundamental research' and exclusions under the EAR99. This information cannot be released to foreign nationals or representatives of a foreign entity, **without first obtaining approval or a license** from 1) the Department of Commerce for items controlled by the Export Administration Regulations (EAR) and 2) the Department of State for items controlled by the International Traffic in Arms Regulations (ITAR).

Export-controlled information **must** be controlled as sensitive information and marked accordingly. This information may be disseminated only to U.S. citizens or non-resident aliens.**

A Foreign Official, as defined by the Foreign Corrupt Practices Act of 1977, jointly managed by the **Securities Exchange Commission** (SEC) and the **Department of Justice** (DOJ), define "foreign officials" as officers or employees of a department, agency or instrumentality of a foreign government, including state-owned or affiliated entities.

Fundamental Research is research in the sciences, engineering or mathematics where the results of the research are: 1) published (or intended for publication, whether accepted or not) and shared broadly within the research community; and 2) research where the researchers have not accepted any restrictions for proprietary or national security reasons.

Because any information (technological or otherwise), which is published, is not subject to the Export Administration Regulations (EAR) (except for encryption object code and source code) and doesn't require a license, "fundamental research" is not subject to the EAR and does not require a license.

Research conducted using publicly available information is also exempt from any license requirements. Some technologies do not require any authorization because they are already published. These include patent applications; published technology and software (other than software and technology controlled as encryption items) that are already published or will be published; or technology which arises during, or as a result of, fundamental research.

International Traffic in Arms Regulations (ITAR) refers to regulations administered by the **U.S. Department of State**. ITAR regulations mandate only U.S. citizens have access to anything they consider technical data and any item cataloged on the U.S. Munitions List (USML), which covers 21 categories including chemical and biological agents, weapons, equipment, electronics, etc. This list is broken down into categories.

The State Department can issue exemptions to that one rule and there are existing exemptions established for specific purposes. There are certain countries that currently have standing agreements with the U.S. that apply to ITAR – Australia, Canada, and the U.K., for example.

Information may include technical data such as models, formulae, engineering designs and specifications or can include technical assistance such as training or instruction.

Items refers to any tangible things, equipment or hardware.

Office of Foreign Assets Control (OFAC) regulations are administered through the **U.S. Department of the Treasury**. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. This office administers and enforces economic and trade sanctions based on U.S. foreign policy.

Restricted Parties Lists are lists of organizations, companies or individuals that various agencies, and other foreign governments, have identified as "parties" that the government restricts "doing business with," including collaborations, training, etc. (regardless of monetary value). These lists are monitored and enforced by **The Department of Justice (DOJ)** for specially-designated nationals. The Federal Bureau of Investigation is a branch of the DOJ that enforces export controls, including counter proliferation and rules put forth by the Office of Foreign Assets Control (OFAC) and the Drug Enforcement Agency (DEA).

Sanctioned Countries are a list of countries that have U.S. sanctions in place which prohibit "doing business with," including collaborations, training, etc. (regardless of monetary value). The Technical Data is defined by ITAR as military hardware **and** plans, diagrams, photos and other documentation used to build ITAR-controlled military gear.

Software is defined as a collection of one or more computer programs or microprograms in either **source cod**e (programming statements) or **object code** (machine-readable instructions). This does not refer to store bought software such as Microsoft Office, etc.

Unfair advantage, as broadly defined by the Foreign Corrupt Practices Act of 1977, may include influencing an official act or decision, obtaining or retaining business or funding, ensuring the lack of prosecution for illegal activity, securing special tax or customs treatment and more.

Visual Compliance is a software used by Downstate to ensure that our consortium personnel and collaborative institutions are not on any restricted parties or denied parties screening list and/or not debarred or suspended from doing federal research. A process is currently underway to use this software to screen all research volunteers and visiting professors to ensure compliance with these regulations