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**Responsible Officer:** Director

**Responsible Office:**  Innovation & Intellectual Property

**DRAFT VERSION** 09/25/2017

**COPYRIGHT OWNERSHIP POLICY**

1. **Policy Statement**

Portland State University (University) is committed to academic freedom and strives to place copyright ownership with the Faculty authors and creators of scholarly, academic, and artistic works, except in certain circumstances.

1. **Reason for Policy/Purpose**

This policy promotes the University’s scholarly, academic, and service missions by establishing a framework for the ownership and disposition of copyright for materials created by University employees and students. Establishing a framework for ownership and disposition of copyright materials provides clear guidance to University Faculty, Staff, and students regarding their rights in created material. By establishing Faculty and student ownership in their scholarly, academic and artistic works, the University fosters an environment of creativity and scholarship and encourages professional advancement. This policy’s purpose is to protect the academic freedom enjoyed by Faculty, to establish Faculty ownership except in limited circumstances, and to establish permissions between Faculty and the University for use of copyright materials owned by each. This policy also sets forth the University’s expectations for copyright ownership of works created by students and non-Faculty Staff and for the disposition of copyright to external sponsors of Faculty projects. By clarifying copyright ownership and permissions, the University protects public resources and establishes expectations for employees who contribute to the University in the course of their employment.

1. **Applicability**

This policy applies to all students, employees, contractors, schools, colleges, and administrative units of the University.

1. **Definitions**

**Commercial Use:** A grant of copyright right, transfer of copyright ownership, or sale of Copyright Materials to a third party which is either contingent on monetary consideration or which allows that third party to further grant rights or sell Copyright Materials for monetary consideration.

**Copyright Materials:** Original works of authorship or creation to which copyright accrues and that are authored or created by Faculty or Staff.

**Course Materials:** Copyright Materials whose copyright is owned by a Faculty member and which are used by that Faculty member for teaching a registered course at University.

**Faculty:** All academically-ranked Faculty of the University. With respect to Course Materials under this policy, Faculty also includes any employee teaching a registered course at University.

**PSU Copyright Material(s):** Copyright Materials for which the copyrights are either owned by the University under Work for Hire, assigned to PSU voluntarily, or required to be assigned to the University under the exceptions to the University’s waiver of Work for Hire for Faculty.

**Scholarly Work:** Includes, but is not limited to,Faculty or Staff authored or created textbooks, pedagogical materials, journal articles, white papers, monographs, plays, poems, musical compositions, visual arts and other works of artistic imagination. As guidance, Scholarly Work are often objects that fulfill the requirement of ‘scholarship’ under a field- and department-relevant promotion and tenure review process, that fulfill the requirement of a degree program, or that are the results of a Sponsored Project or research study.

**Separate Agreement:** A written agreement between the University and Faculty regarding the ownership of Copyright Materials to be created using University resources, such as the creation of Copyright Materials for a University-funded or -directed project, or the creation of Copyright Materials while under a course release.

**Sponsored Project(s):** Research or service undertaken by Faculty or Staff utilizing any external funding source, such as grants, gifts, contracts, or awards.

**Staff:** University employees who are not academically ranked.

**Unit:** The administrative area within the University that has provided resources specifically for the creation of Copyright Material under a Separate Agreement.

**Work for Hire.** As used in this policy, the term has the same meaning as in section 101 of the Copyright Act of 1976, as amended. Generally, a “work for hire” is a work prepared by an employee within the scope of his or her employment or by a third party hired by the University to perform services or undertake other work through which Copyright Materials are created.

1. **Policy**
2. **Copyright Ownership**
	1. **Faculty Ownership, University Waiver of Work for Hire.** Subject to the limitation set forth below, the University by this policy waives its rights under the Work for Hire rule for Faculty and acknowledges that Faculty author(s) or creator(s) of Copyright Materials hold the original copyright to Copyright Materials created while employed by the University. This waiver is subject to the following exceptions, under which the Work for Hire rule still applies:
		1. Copyright Materials developed under a Sponsored Project;
		2. Copyright Materials developed under a Separate Agreement where ownership to Copyright Materials is not otherwise addressed.
	2. **Copyright ownership under Separate Agreements.** When entering into Separate Agreements, the University and the Faculty member may agree that either the Faculty member or the University will own the copyright in Copyright Materials created under the Separate Agreement. This Separate Agreement will be made between the Faculty member and the Unit. In proposing University ownership of Copyright Materials in Separate Agreements, the Unit should consider both the level of University resources to be used in the Separate Agreement and any anticipated incorporation of pre-existing Faculty-owned Copyright Materials. No Separate Agreement shall change any part of this policy.
	3. **Scholarly Work Exemption.** If dissemination of a Scholarly Work involves a copyright assignment to a third party of PSU Copyright Materials which are PSU Copyright Materials under the Work for hire rule or which would otherwise be required to be assigned to the University under the exceptions to the University’s waiver of the Work for Hire rule, and to the extent that such PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or Separate Agreement, PSU will not assert its ownership in the copyright to such materials. The University will preserve the publishing rights of Faculty, Staff, and students when entering Sponsored Project agreements unless the Faculty or Staff principal investigator is willing to accept publication restrictions for the needs of individual projects. The University recommends that when entering into agreements for the publication and distribution of Copyright Materials, authors make arrangements allowing them to archive their materials in PDXScholar, the University's open access institutional repository.
	4. **University Ownership of Copyright Materials created by Staff.** Staff are subject to the Work for Hire rule, and Copyright Materials authored or created by Staff within the course and scope of their employment are PSU Copyright Materials.
	5. **Students’ Ownership of Student-Created Works.** Each student holds the copyright to Copyright Materials that the student authors or creates, unless the creation/authorship of such Copyright Materials was performed by the student under a Sponsored Project, under a Separate Agreement, or in a student’s capacity as Staff. A student may voluntarily grant permissions to or transfer copyright to the University or to another entity. Such permission or transfer should be in a writing agreed to by the student. Faculty and Staff shall not infringe a student’s Copyright Material, in their capacity as a University employee or otherwise. The University shall not require a student’s assignment of Copyright Materials to the University or to a third party to fulfill any academic requirement, nor shall the University deny any academic requirement activity in response to a student agreeing to assign their copyright to a third party. The University will seek to advise and help students understand their rights under copyright law.
	6. **Digital Transfer.** The uploading of Copyright Material to an online teaching platform or other transfer to digital medium operated by the University shall not change the ownership of the original Copyright Material unless explicitly agreed by the copyright owner of such Copyright Materials.
3. **Copyright Permissions**
	1. **Blanket University-to-Faculty Permissions for PSU Copyright Materials.** The University by this policy grants a non-exclusive, non-commercial copyright license in PSU Copyright Material to the Faculty author(s) or creator(s) of that PSU Copyright Material, provided that the PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or are not licensed or expected to be licensed to a third party. Faculty are encouraged to further distribute such PSU Copyright Materials, when applicable, for public benefit under appropriate non-commercial open source (<http://www.opensource.org/>) or creative commons (<http://creativecommons.org/>) licenses. This grant to Faculty may terminate if the University licenses PSU Copyright Materials to a third party for Commercial Use. Such Commercial Use licenses may be first executed only with the acknowledgment of the Faculty author or creator.
	2. **Limited University-to-Staff Permissions for open source release of PSU Copyright Materials.** Staff authors of PSU Copyright Material may release such materials under appropriate non-commercial open source or creative commons licenses for purposes of participation in an open source project or in connection with membership in or presentation to a professional organization , provided that: (a) the Staff author(s) obtain permission from their supervisor or department chair; (b) release of the PSU Copyright Materials is not limited by the terms of a Sponsored Project or other agreement; and (c) the PSU Copyright Materials are not licensed or expected to be licensed to a third party.
	3. **Limited, Revocable Faculty-to-University Permissions for Course Materials for Teaching University Courses.** Generally, all course materials for teaching University Courses can be shared with permission of the Faculty author(s) or creator(s). Prior to the use of any pre-existing course materials, an individual seeking permission to use a Faculty member’s intellectual property shall request permission in writing. The Faculty author(s) or creator(s) shall consider the request, and if granted, written permission will be provided to the requesting party with a copy to the administrative head of their department, school, or college. To ensure there is sufficient time for a faculty member to receive and respond to a request for permission to use course materials, the deadlines to request to use materials are as follows:

For a Fall term course: June 15

For a Winter term course: October 15

For a Spring term course: January 25

For a Summer term course: April 15

A non-exclusive, non-commercial one term copyright license will be automatically granted without the permission of the Faculty author(s) or creator(s) to the replacement instructor for a regularly scheduled class whose instructor was unexpectedly unable to continue or complete the class.

Faculty or Staff using such Course Materials, and the Department Chair, shall keep written records of copyright permission granted. The Faculty author(s) or creator(s) of such Course Materials may revoke permission at any time by providing written notice to the administrative head of their department, school, or college.

* 1. **Faculty-to-University Permissions for Course Materials for Archiving, Accreditation and Accommodations.** Upon first using Course Materials in a registered course, all Faculty grant to the University, to the extent they have ownership in or permissions for Course Materials, a non-exclusive, non-commercial copyright license in those Course Materials for the purpose of archiving, accreditation, and making derivatives for the purpose of accommodation and accessibility (such as may be required under the Americans with Disabilities Act). Such derivatives shall be treated like Course Materials, and are not intended to be used by University or other Faculty or Staff unless under the license outlined in 2.3.
	2. **Digital Transfer.** The uploading of Copyright Material to an online teaching platform or other transfer to digital medium operated by the University may require permissions from the owner of copyright to the Copyright Material; however, for Course Materials these permissions by this policy shall be subordinate to a Faculty member’s ability to revoke permissions to use Course Materials as provided in section 2.3 above, and Faculty shall have the ability to require such Course Materials be removed from the digital medium for the purposes of teaching registered courses.
1. **Faculty disclosure.** Faculty and Staff using or distributing PSU Copyright Materials under the license granted in section 2.1 or pursuant to section 2.2 above have an obligation to mark PSU Copyright Materials as “© Portland State University.” Faculty and Staff who wish to use or distribute PSU Copyright Materials for Commercial Use shall seek an appropriate license by disclosing the PSU Copyright Materials to the University’s Office of Innovation & Intellectual Property.
2. **Independent Contractors of Works Created Under Contract.** Where the University hires third-parties to perform services or undertake other work where Copyright Materials are created, it is the general practice of the University to retain the copyright ownership in those works under the Work for Hire rule. Such materials will be PSU Copyright Materials.
3. **Collaborative and Joint Works.** When individuals collaborate to author Copyright Materials, a "joint work" often results, in which all the rights holders jointly hold nonexclusive rights to use the work. For example, Copyright Materials may be authored or created by combinations of Faculty, students, and Staff working on a project and this collaboration may result in a joint work(s) where the copyright is owned jointly and the work created may be a combination PSU Copyright Materials and Faculty-owned or student-owned Copyright Materials. Prior to authoring or creating such works, Faculty, other University employees, and students who collaborate with each other or with non-University third-parties (*e.g.*, volunteers, visitors, other collaborators) are encouraged to describe or determine the disposition of the resulting copyright. A sample form is provided in Links to Related Forms.
4. **Licenses to Third Parties.** The license of PSU Copyright Material from the University to third parties for Commercial Use, or for any use in exchange for license fees, including all terms and execution of such license agreements, is the sole responsibility of the Office of Innovation & Intellectual Property under the Vice President for Research & Strategic Partnerships.
5. **Sponsored Projects.**
	1. When negotiating agreements with external parties for Sponsored Projects, the University shall endeavor to retain PSU ownership of copyright for any Copyright Materials created by Faculty and/or Staff under the Sponsored Project. The University may grant rights in PSU Copyright Materials created under a Sponsored Project to an external sponsor commensurate with the purpose of the agreement and the nature of the Sponsored Project, but will not grant a license for Commercial Use in a Sponsored Project agreement unless a separate license to such rights is executed through the Office of Innovation & Intellectual Property.
	2. For Sponsored Projects or other contracts (*e.g.*, procurement contracts) under which the University is primarily performing a service or allowing use of University equipment without significant intellectual input from Faculty or Staff (*e.g.*, centers with published external user rates in the University Fees and Fines book), the University may assign ownership of Copyright Materials created under the Sponsored Project to the external sponsor provided that Faculty and Staff performing the project acknowledge in writing that for that Sponsored Project:
		1. No students will create Copyright Materials for the Sponsored Project,
		2. Only Copyright Materials created under the Sponsored Project will be assigned, and no previously created Copyright Materials shall be included,
		3. University Faculty and Staff will have no right to use the assigned Copyright Materials unless otherwise permitted, and
		4. University Faculty and Staff will have no right to publish the assigned Copyright Materials unless otherwise permitted.

 In addition, the external sponsor must acknowledges in writing that:

* + 1. No export-controlled information in the Copyright Materials will be assigned, and
		2. The University is under no obligation to seek export control licenses for such information.

**VI. Procedure**

1. **Policy Interpretation and Dispute Resolution**
	1. This policy and its implementation may require interpretation and review. University stakeholders should make every attempt to resolve disputes informally with the assistance of one or more of the following: the Office of Innovation & Intellectual Property (for overall policy clarification and matters regarding Commercial Use of PSU Copyright Materials), the Office of Academic Affairs (for issues involving Course Materials and Separate Agreements), and the Sponsored Projects Administration in Research and Strategic Partnerships (for obligations or issues related to Sponsored Projects).
	2. If informal procedures and consultation do not provide resolution of a dispute or policy issue, University stakeholders may request that the President convene a Copyright Advisory Committee to recommend a resolution to the President. The Copyright Advisory Committee will be composed of five (5)individuals. The committee shall be chaired by the the President or President’s designee, and shall have two administrative members appointed by the President or designee, and two faculty members appointed by the presiding officer of the Faculty Senate. The committee members appointed will not have participated in the informal dispute resolution process in 1.1 above. The committee shall be convened and meet to hear the case within fifteen (15) working days of the declaration of any stakeholder in Section 1.1 that an informal resolution is not possible. The committee will generate a written report with their recommendation, including findings and rationale for their decision. The President or designee will make a decision regarding the dispute or policy issue within twenty (20) working days after receipt and review of the Copyright Advisory Committee’s recommendations. If the stakeholder is not represented by a union, the President’s decision will be final and binding.
	3. If the stakeholder is a member of a bargaining unit and is not satisfied with the President’s decision in 1.2, a grievance may be initiated at the President’s Step of the relevant contractual grievance procedure. The President’s review of the decision will be a request for reconsideration of their initial decision.

If, upon reconsideration, the member is still not satisfied with the decision, the bargaining unit representative can proceed to arbitration in accordance with their collective bargaining agreement.

* 1. Representation by Counsel- Stakeholders who are represented by a union may be assisted by legal counsel, lay counsel, or a union official throughout this process, and may choose to have counsel advocate at any step of the dispute resolution process on their behalf.
1. **Revenue.** On a quarterly basis, and after the recovery of reasonable direct expenses, the Office of Innovation & Intellectual Property shall distribute any licensing revenue received by the University for the granting of licenses to PSU Copyright Materials, including fees, milestone payments, running royalties, liquidated equity, and any other cash received, in the manner described below. It is the intent of the University that licensing revenue distributed internally be used as long as available to support ongoing innovation activities of the unit that generated the licensed PSU Copyright Material, and that such funds should not be removed from the assigned department, school, college, or project, or charged administrative overhead fees for their use.
	1. For PSU Copyright Materials that are under continual development within the University and licensed non-exclusively primarily to end users or consumers of the materials:
		1. 10% to the Office of Innovation & Intellectual Property, and
		2. 90% to an internal account controlled by the lead Faculty or Staff on the project that created the PSU Copyright Materials.
	2. For PSU Copyright Materials in substantially complete form that are licensed for Commercial Use to third parties who have responsibility for selling the PSU Copyright Materials to end users or consumers:
		1. 25% to the department or center in which the author(s) or creator(s) of the PSU Copyright Materials primarily developed the PSU Copyright Materials,
		2. 25% to the Office of Innovation & Intellectual Property, and
		3. 50% directly as royalties to the author(s) or creator(s) of the PSU Copyright Materials.
			1. If there are multiple authors/creators, or contributors who are not legal authors/creators but whose contribution the authors/creators would like to recognize, PSU requires the authors/creators to reach written agreement, recorded with the Office of Innovation & Intellectual Property, on how to further divide this 50%. If no agreement can be reached, the Vice President for Research & Strategic Partnerships will decide on the revenue split for the authors/creators. If the faculty member is not satisfied with the Vice President for Research & Strategic Partnership’s decision, the faculty member or any dissatisfied stakeholder can pursue dispute resolution as provided in § 1.1 et seq. above.

1. **Links To Related Forms**

Name As It Appears In the Form Title, with hyperlink

1. Communication to Faculty regarding use of Course Materials.
2. Revocation of Permission to use Course Materials
3. Disposition of Copyrights in Joint Works
4. Internal Acknowledgement for Assignment of Copyright to a Sponsor
5. **Links To Related Policies, Procedures or Information**

*This is where the University could reference a Copyright Handbook, for instance, or a form*.

1. Case studies and examples of Copyright Policy in practice. (TBD)
2. PSU Copyright Guidebook. (<http://guides.library.pdx.edu/copyright-guidance>)
3. **Contacts**

If you have any questions regarding this policy, please contact the Office of Innovation & Intellectual Property at (503) 725-8454 (for policy clarification and matters regarding commercialization of intellectual property) or the Sponsored Projects Administration in Research and Strategic Partnerships at (503) 725-8306 (for obligations stemming from sponsored activity).

1. **History/Revision Dates** [use this date format: May 27, 2012]

**Adoption Date:** [date policy first approved by UPC and is in effect]

**Policy History:** Pursuant Section 170 Chapter 768 2013 Oregon Laws, effective \_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_, this policy supersedes Oregon Administrative Rules 580-43-0011 \_\_\_\_\_\_\_\_\_\_\_, and (former) Oregon University System Internal Management Directive 6.2 et seq. as those rules and policies pertain to copyright ownership. ***NOTE:*** *The University would provide a more specific statement about what policies are in fact replaced. This is but an example of language typically in this section.*

**Reaffirmation Date:** [date UPC concurs with responsible officer that an existing policy requires no change, and remains in effect]

**Revision Date: [**date policy has been changed and reapproved]

**Next Review Date:** Month, Day, Year [*at least* every five years, sooner as needed]

1. **Policy Adoption/Reaffirmation/Revision Approvals**

Approved \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_

PORTLAND STATE UNIVERSITY PRESIDENT

Approved \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_

PORTLAND STATE UNIVERSITY GENERAL COUNSEL

**Permission to Use f Course Materials**

**(Sample Form 1 to Copyright Ownership Policy)**

This form is intended to provide a mechanism for individuals to request permission from a faculty member to usetheir Course Materials, and for the granting of that permission to be tracked.

Faculty informed that the Copyright Ownership Policy allows Faculty author(s) or creator(s) of such Course Materials to revoke such permissions at any time by providing written notice to the administrative head of their department, school, or college.

Individual requesting permission to use materials: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Faculty Owner of Course Materials: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Course Materials Description (be as descriptive and specific as possible):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Revocation of Permission to use Course Materials**

**(Sample Form 2 to Copyright Ownership Policy)**

Under the Copyright Ownership Policy, Faculty author(s) or creator(s) of such Course Materials may revoke such permissions at any time by providing written notice to the administrative head of their department, school, or college.

This Form is intended to provide a mechanism for notifying the administrative head of a Faculty’s department, school, or college of such revocation of permission. Faculty are encouraged to use this form, or another mechanism like it, to notify and record such revocation.

Faculty Owner of Course Materials: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Administrative Head of Unit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Course Materials Description (be as descriptive and specific as possible):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Disposition of Copyrights in Joint Works**

**(Sample Form 3 to Copyright Ownership Policy)**

When individuals collaborate to author Copyright Materials, a "joint work" often results, in which all the rights holders jointly hold nonexclusive rights to use the work. For example, Copyright Materials may be authored or created by both Faculty and Staff working on a project and this collaboration may result in a joint work(s) where the copyright is owned jointly by both the University and the Faculty member(s) and the work created is both PSU Copyright Materials and Faculty-owned Copyright Materials. Prior to authoring or creating such works, Faculty, other University employees, and students who collaborate with each other or with non-University third-parties (*e.g.*, volunteers, visitors, other collaborators) are encouraged to describe or determine the disposition of the resulting copyright.

This form is intended to provide a mechanism for such determination or disposition. Is it not required, but encouraged that Faculty and Staff think through and record such dispositions using this form or another mechanism.

**Participant Information** (repeat as necessary)

*Name:*

*Address:*

*Preferred e-mail:*

**Who at PSU & Why: Core Innovation Information**

*Lead(s)*:

*Project Title*:

*General Innovation/Creation Goals*:

**What & How: Works Information**

*Key Innovation Artifacts we plan to create*:

*Funding Sources (if any):*

**When: How we share Innovation Artifacts & with whom we share them**

*Please list the intended use of the items to be created, and how they are intended to be shared and with whom. Which of the participants may use the items, and how?*

**Credit & Revenue**

*Credit/Authorship Attribution of Participants*:

*Revenue Management*: *(in the event that PSU Copyright Materials are licensed to a third party, or if any participant independently sells or licenses items created for the Project, how will available revenue be distributed among the participants?*

**Other Obligations**

*Please list any and all additional conditions or conflicting agreements and obligations.*

**Internal Acknowledgement for Assignment of Copyright to a Sponsor**

**(Sample Form 4 to Copyright Ownership Policy)**

For Sponsored Projects or other contracts (*e.g.*, procurement contracts) under which the University is primarily performing a service or allowing use of University equipment without significant intellectual input from Faculty or Staff (*e.g.*, centers with published external user rates in the University Fees and Fines book), the University may assign ownership of Copyright Materials created under the Sponsored Project to the external sponsor, provided that Faculty and Staff performing the project acknowledge in writing the items outlined below.

This form is intended to provide a mechanism for such acknowledgment. Prior to agreeing to assign copyright to a Sponsor of a Sponsored Project, the principal investigator for the project should acknowledge in writing that:

* No students will create Copyright Materials for the Sponsored Project,
* Only Copyright Materials created under the Sponsored Project will be assigned, and no previously created Copyright Materials shall be included,
* University Faculty and Staff will have no right to use the assigned Copyright Materials unless otherwise permitted, and
* University Faculty and Staff will have no right to publish the assigned Copyright Materials unless otherwise permitted.

PIAF:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sponsor:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledged by Faculty: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In addition, in a separate correspondence or record, the Sponsor should acknowledge in writing that:

* No export-controlled information in the Copyright Materials will be assigned, and
* The University is under no obligation to seek export control licenses for such information.