**DEFINITIONS**

* All terms initially capitalized herein that are not otherwise defined herein shall have the meaning ascribed thereto in the Industry-Sponsored Research Agreement. Examples include, without limitation, Agreement, Affiliate, Control, Intellectual Property, Parent Company, Party, Parties, Scope of Work, Sponsor, Total Agreement Price, Additional Sponsor-Requested Insurance Cost, and University.
* “**Human Health**” includes, but is not limited to, diagnostics, therapeutics, medical devices, and uses thereof.
* “**Internal Funds**” means funding that Sponsor has obtained through its own revenues, savings, and/or liquidation of assets, as well as raising capital through equity, debt, and convertible debt. Internal Funds do **not** include funding from grants, cooperative agreements, or contracts from governmental or non-profit entities, including, without limitation, federal, federal flow-through, state, county, municipal, and non-profit funding.
* “**Net Sales**” means the gross consideration received from the sale, use, lease, transfer, consignment, or other disposition of a Product (collectively, a “**Sale**”) by Sponsor, Sponsor’s Affiliates, Sponsor’s Sublicensee(s), and Affiliates and Sublicensees of Sponsor’s Affiliates and Sublicensees (all, collectively, the “**Commercializing Parties**,” and individually, a “**Commercializing Party**”) less (if directly attributable to the Sale of such Product) all normal and customary discounts in the trade actually granted, credits or allowances actually granted upon claims or returns (not exceeding the original billing or invoice amount), sales and/or use taxes actually paid, import and/or export duties actually paid, and transportation costs, including insurance, for outbound freight related to the delivery of Product, all as recorded by the Commercializing Parties in their official books and records in accordance with generally accepted accounting practices and consistent with their published financial statements and/or regulatory filings with the United States Securities and Exchange Commission. In the event a Commercializing Party transfers a Product to a third party in a bona fide arm’s length transaction for any consideration other than cash, then the Net Sales price for such Product shall be deemed to be the standard invoice price then being invoiced by the Commercializing Party in an arm’s length transaction with similar, independent third parties. Any calculation of Net Sales from sales of combination products and/or services utilizing Intellectual Property shall first be calculated by multiplying the percentage value of the licensed Product(s) contained in the combination product(s), such percentage value being the quotient obtained by dividing (i) the current market value of the licensed Product(s) by (ii) the sum of the separate current market values of the licensed Product(s) and the other components which are contained in the combination product(s). When no current market value is available for a component other than the licensed Product(s) of a combination product(s), the Commercializing Party, in coordination with Sponsor if necessary, shall in good faith calculate a hypothetical market value for such component, allocating the same proportions of costs, overhead, and profit as are then allocated to similar components made by the Commercializing Party and having an ascertainable market value. If, however, the Commercializing Party, in coordination with Sponsor if necessary, determines that the above formula does not adequately and fairly reflect the contribution of each component in a particular combination product(s), then the Parties shall negotiate in good faith a modification of the formula for the determination of Net Sales of that combination product(s).
* “**Product**” means any good, product, article, composition, apparatus, material, substance, process, service, or method which is Covered By, in whole or in part, by Intellectual Property. “**Covered By**” means that the research, development, manufacture, use, offer for sale, sale, or importation of a Product would, if conducted by a third party, infringe the Intellectual Property.
* “**Sublicensee**” means a third party that is granted rights in Intellectual Property, or a licensee of a third party that is granted rights in Intellectual Property.

**UPFRONT COMMERCIAL OPTIONS**

***OPTION A*: Term-Limited, Non-Exclusive, and Royalty-Free Commercial License with an Option to Negotiate an Exclusive License**

Provided Sponsor uses its Internal Funds to pay for the entirety of the Total Agreement Price, the Additional Sponsor-Requested Insurance Cost, if applicable, and the Option A Non-Exclusive License Fee (defined below), University hereby grants Sponsor a two-year, non-sublicensable (except to Affiliates or with prior written University approval), non-exclusive, and royalty-free license to Intellectual Property for any lawful purpose to make, have made, use, import, offer to sell, and sell Products in any field (the “**Option A Non-Exclusive License**”). In consideration for the Option A Non-Exclusive License, Sponsor will pay University a fee of either five percent (5%) of the Total Agreement Price or three thousand five hundred U.S. dollars ($3,500.00), whichever is greater (the “**Option A Non-Exclusive License Fee**”), within thirty (30) days of execution of the Agreement. The Option A Non-Exclusive License is subject to the following additional terms and conditions:

1. Sponsor shall not include the name of University or of any employee of University, or any trade name, trademark, logo, or other designation of University in any advertising, any promotional or sales literature, on its website, for the purpose of raising capital, or any other publicity matter without the prior written approval of University’s Office of Trademark Licensing and Enforcement (licensing@boisestate.edu with a carbon copy to techtransfer@boisestate.edu). Notwithstanding the foregoing, Sponsor may use the name of University or of an employee of University in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent, and Sponsor is encouraged to acknowledge that the Intellectual Property was developed by University’s researchers.
2. Sponsor agrees to indemnify and hold harmless the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents from and against any and all claims, demands, causes of action whatsoever, costs of suit, and reasonable attorneys’ fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, arising out of, or resulting from the use, exercise, or practice of the rights granted herein.
3. In no event shall the State of Idaho, University, or University’s Regents, officers, employees, students, contractors, or agents be liable for any indirect, special, consequential, or punitive damages (including, without limitation, damages for lost profits, expected savings, or other economic losses, or for injury to persons or property) arising out of, or in connection with, the rights granted herein, regardless of whether the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents know or should know of the possibility of such damages.

1. Beginning at the time when there is a Sale or distribution of any Product, including for the purpose of obtaining regulatory approvals, by a Commercializing Party, Sponsor shall, at its sole cost and expense, procure, and maintain commercial general liability insurance in amounts not less than $1,000,000.00 per incident and $2,000,000.00 annual aggregate, and Sponsor shall use reasonable efforts to have the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for Sponsor’s indemnification obligations herein; (iii) coverage for litigation costs; and (iv) intellectual property infringement coverage. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of Sponsor’s liability with respect to its indemnification obligations herein. Sponsor shall provide University with written evidence of such insurance within thirty (30) days of its required procurement, and Sponsor shall provide University with written notice (to rmi@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) at least fifteen (15) calendar days prior to the cancellation, non-renewal, or material change in such insurance.
2. Sponsor agrees that University shall, in its sole discretion, determine whether to prosecute any patent or obtain copyright or other protections for Intellectual Property using counsel of University’s choice who will take instructions solely from University. University may, in its sole discretion, include claims requested by Sponsor in any patent application involving Intellectual Property.
3. This Option A Non-Exclusive License expires upon the earliest of: (i) two years from the date Intellectual Property is disclosed to Sponsor; (ii) automatically, if Sponsor becomes bankrupt or insolvent and/or if the business of Sponsor shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Sponsor or otherwise; (iii) upon thirty (30) calendar days written notice from University if Sponsor fails to timely pay the Option A Non-Exclusive License Fee and all of University’s invoices pursuant to the Agreement, unless, before the end of such thirty (30) calendar day notice period, Sponsor pays the Option A Non-Exclusive License Fee and all of University’s invoices pursuant to the Agreement in full; (iv) upon ninety (90) calendar days written notice from University if Sponsor breaches or defaults any obligations under this Option A Non-Exclusive License, unless, before the end of such ninety (90) calendar day notice period, Sponsor has cured the default or breach to University’s satisfaction and so notifies University, stating the manner of the cure; or (v) at any time by mutual written agreement of the Parties.

University also hereby grants Sponsor the first option to negotiate an exclusive license to Intellectual Property on commercially reasonable terms negotiated in good faith and agreed upon between University and Sponsor (the “**Option A Option**”). Sponsor has ninety (90) days, from the date Intellectual Property is disclosed to Sponsor, to exercise its Option A Option (the “**Option A** **Option** **Election Period**”). If Sponsor exercises the Option A Option during the Option A Option Election Period, the Parties shall diligently negotiate the terms of an exclusive commercial license, which shall contain, among other things, terms under which Sponsor reimburses University for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection. If, in good faith, the Parties do not reach an agreement and finalize an exclusive license agreement within six (6) months from the date of disclosure of Intellectual Property to Sponsor, University will have no further obligation to the Sponsor and will be free to license Intellectual Property to one or more third parties, provided that Sponsor shall retain its Option A Non-Exclusive License during its term.

***OPTION B*: Non-Exclusive and Royalty-Free Commercial License with an Option to Negotiate an Exclusive License**

Provided Sponsor uses its Internal Funds to pay for the entirety of the Total Agreement Price, the Additional Sponsor-Requested Insurance Cost, if applicable, and the Option B Non-Exclusive License Fee (defined below), University hereby grants Sponsor a non-sublicensable (except to Affiliates or with prior written University approval), non-exclusive, and royalty-free license to Intellectual Property for any lawful purpose to make, have made, use, import, offer to sell, and sell Products in any field (the “**Option B Non-Exclusive License**”). In consideration for the Option B Non-Exclusive License, Sponsor will pay University a fee of either ten percent (10%) of the Total Agreement Price or seven thousand five hundred U.S. dollars ($7,500.00), whichever is greater (the “**Option B Non-Exclusive License Fee**”), within thirty (30) days of execution of the Agreement. The Option B Non-Exclusive License is subject to the following additional terms and conditions:

1. Sponsor shall not include the name of University or of any employee of University, or any trade name, trademark, logo, or other designation of University in any advertising, any promotional or sales literature, on its website, for the purpose of raising capital, or any other publicity matter without the prior written approval of University’s Office of Trademark Licensing and Enforcement (licensing@boisestate.edu with a carbon copy to techtransfer@boisestate.edu). Notwithstanding the foregoing, Sponsor may use the name of University or of an employee of University in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent, and Sponsor is encouraged to acknowledge that the Intellectual Property was developed by University’s researchers.
2. Sponsor agrees to indemnify and hold harmless the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents from and against any and all claims, demands, causes of action whatsoever, costs of suit, and reasonable attorneys’ fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, arising out of, or resulting from the exercise or practice of the rights granted herein.
3. In no event shall the State of Idaho, University, or University’s Regents, officers, employees, students, contractors, or agents be liable for any indirect, special, consequential, or punitive damages (including, without limitation, damages for lost profits, expected savings, or other economic losses, or for injury to persons or property) arising out of, or in connection with, the rights granted herein, regardless of whether the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents know or should know of the possibility of such damages.

1. Beginning at the time when there is a Sale or distribution of any Product, including for the purpose of obtaining regulatory approvals, by a Commercializing Party, Sponsor shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $1,000,000.00 per incident and $2,000,000.00 annual aggregate, and Sponsor shall use reasonable efforts to have the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for Sponsor’s indemnification obligations herein; (iii) coverage for litigation costs; and (iv) intellectual property infringement coverage. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of Sponsor’s liability with respect to its indemnification obligations herein. Sponsor shall provide University with written evidence of such insurance within thirty (30) days of its required procurement, and Sponsor shall provide University with written notice (to rmi@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) at least fifteen (15) calendar days prior to the cancellation, non-renewal, or material change in such insurance.
2. Sponsor agrees that University shall, in its sole discretion, determine whether to prosecute any patent or obtain copyright or other protections for Intellectual Property using counsel of University’s choice who will take instructions solely from University. University may, in its sole discretion, include claims requested by Sponsor in any patent application involving Intellectual Property.
3. This Option B Non-Exclusive License expires upon the earliest of: (i) automatically, if Sponsor becomes bankrupt or insolvent and/or if the business of Sponsor shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Sponsor or otherwise; (ii) upon thirty (30) calendar days written notice from University if Sponsor fails to timely pay the Option B Non-Exclusive License Fee and all of University’s invoices pursuant to the Agreement, unless, before the end of such thirty (30) calendar day notice period, Sponsor pays the Option B Non-Exclusive License Fee and all of University’s invoices pursuant to the Agreement in full; (iii) upon ninety (90) calendar days written notice from University if Sponsor breaches or defaults any obligations under this Option B Non-Exclusive License, unless, before the end of such ninety (90) calendar day notice period, Sponsor has cured the default or breach to University’s satisfaction and so notifies University, stating the manner of the cure; or (iv) at any time by mutual written agreement of the Parties.

University also hereby grants Sponsor the first option to negotiate an exclusive license to Intellectual Property on commercially reasonable terms negotiated in good faith and agreed upon between University and Sponsor (the “**Option B Option**”). Sponsor has ninety (90) days, from the date Intellectual Property is disclosed to Sponsor, to exercise its Option B Option (the “**Option B** **Option** **Election Period**”). If Sponsor exercises the Option B Option during the Option B Option Election Period, the Parties shall diligently negotiate the terms of an exclusive commercial license, which shall contain, among other things, terms under which Sponsor reimburses University for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection. If, in good faith, the Parties do not reach an agreement and finalize an exclusive license agreement within six (6) months from the date of disclosure of Intellectual Property to Sponsor, University will have no further obligation to the Sponsor and will be free to license Intellectual Property to one or more third parties, provided that Sponsor shall retain its Option B Non-Exclusive License.

***OPTION C*: Exclusive and Royalty-Free Commercial License with a One-Time Upfront Fee**

Provided Sponsor uses its Internal Funds to pay for the entirety of the Total Agreement Price, the Additional Sponsor-Requested Insurance Cost, if applicable, and the Option C Exclusive License Fee (defined below), University hereby grants Sponsor an exclusive, non-sublicensable (except to Affiliates or with prior written University approval), and royalty-free license to Intellectual Property to make, have made, use, import, offer to sell, and sell Products in all fields except Human Health (the “**Option C** **Exclusive License**”). In consideration for the Option C Exclusive License, Sponsor will pay University a fee of either twenty percent (20%) of the Total Agreement Price or fifty thousand U.S. dollars ($50,000.00), whichever is greater (the “**Option C Exclusive License Fee**”), within thirty (30) days of execution of the Agreement. The Option C Exclusive License is subject to the following additional terms and conditions:

1. Sponsor shall not include the name of University or of any employee of University, or any trade name, trademark, logo, or other designation of University in any advertising, any promotional or sales literature, on its website, for the purpose of raising capital, or any other publicity matter without the prior written approval of University’s Office of Trademark Licensing and Enforcement (licensing@boisestate.edu with a carbon copy to techtransfer@boisestate.edu). Notwithstanding the foregoing, Sponsor may use the name of University or of an employee of University in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent, and Sponsor is encouraged to acknowledge that the Intellectual Property was developed by University’s researchers.
2. Sponsor agrees to indemnify and hold harmless the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents from and against any and all claims, demands, causes of action whatsoever, costs of suit, and reasonable attorneys’ fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, arising out of, or resulting from the exercise or practice of the rights granted herein.
3. In no event shall the State of Idaho, University, or University’s Regents, officers, employees, students, contractors, or agents be liable for any indirect, special, consequential, or punitive damages (including, without limitation, damages for lost profits, expected savings, or other economic losses, or for injury to persons or property) arising out of, or in connection with, the rights granted herein, regardless of whether the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents know or should know of the possibility of such damages.

1. Beginning at the time when there is a Sale or distribution of any Product, including for the purpose of obtaining regulatory approvals, by a Commercializing Party, Sponsor shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $1,000,000.00 per incident and $2,000,000.00 annual aggregate, and Sponsor shall use reasonable efforts to have the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for Sponsor’s indemnification obligations herein; (iii) coverage for litigation costs; and (iv) intellectual property infringement coverage. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of Sponsor’s liability with respect to its indemnification obligations herein. Sponsor shall provide University with written evidence of such insurance within thirty (30) days of its required procurement, and Sponsor shall provide University with written notice (to rmi@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) at least fifteen (15) calendar days prior to the cancellation, non-renewal, or material change in such insurance.
2. University will confer with Sponsor to determine whether to prosecute any patent or obtain copyright or other protections for Intellectual Property. Sponsor shall be given reasonable opportunity to advise and comment upon the prosecution of such rights, and any Sponsor requests with regard to prosecution strategy shall be considered in good faith. University will maintain final authority in all decisions regarding the protection of Intellectual Property. University or its designee, using counsel of University’s choice who will take instructions solely from University, shall apply for and maintain all rights to the Intellectual Property at Sponsor’s expense. University will request that copies of all documents prepared by University’s counsel for submission to governmental intellectual property offices be provided to Sponsor for review and comment prior to filing, to the extent practicable under the circumstances. Within thirty (30) days of receipt of invoice from University, Sponsor shall, on an ongoing basis, reimburse University for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection.
3. Sponsor, at its sole expense, must enforce Intellectual Property against infringement by third parties and is entitled to retain recovery from such enforcement. Sponsor must notify University in writing (to contracts@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) of any potential infringement of Intellectual Property within thirty (30) calendar days of Sponsor’s knowledge thereof. If Sponsor does not file suit against a substantial infringer within six (6) months of its knowledge thereof, then University may, in its sole discretion, enforce Intellectual Property on behalf of itself and Sponsor, with University retaining all recoveries from such enforcement, and/or reduce the license granted hereunder to non-exclusive. In any dispute involving an infringer, the Parties agree to cooperate fully with each other. At the request and expense of the Party bringing suit, the other Party will permit access, during regular business hours, to all relevant personnel, records, papers, information, samples, specimens, and the like in its possession.
4. This Option C Exclusive License expires upon the earliest of: (i) automatically, if Sponsor becomes bankrupt or insolvent, ceases business operations, and/or if the business of Sponsor shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Sponsor or otherwise; (ii) upon thirty (30) calendar days written notice from University if Sponsor fails to timely pay the Option C Non-Exclusive License Fee or University’s invoices pursuant to the Agreement and for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection, unless, before the end of such thirty (30) calendar day notice period, Sponsor pays the Option C Non-Exclusive License Fee and all of University’s invoices pursuant to the Agreement and for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property in full; (iii) upon ninety (90) calendar days written notice from University if Sponsor breaches or defaults any other obligations under this Option C Exclusive License, unless, before the end of such ninety (90) calendar day notice period, Sponsor has cured the default or breach to University’s satisfaction and so notifies University, stating the manner of the cure; or (iv) at any time by mutual written agreement of the Parties.
5. Any time after three (3) years from the date Intellectual Property is disclosed to Sponsor, University has the right to terminate this Option C Exclusive License in any national political jurisdiction if Sponsor, within ninety (90) calendar days after receiving written notice from University of the intended termination, fails to provide written evidence satisfactory to University that Sponsor or a Commercializing Party(ies) has commercialized or is actively and effectively attempting to commercialize Intellectual Property in such jurisdiction(s). The following definitions apply to this clause: (i) “commercialized” means having Sales in such jurisdiction; and (ii) “actively and effectively attempting to commercialize” means having an effective, ongoing and active research, development, manufacturing, marketing, or sales program, as appropriate, directed toward obtaining regulatory approval, production, and/or Sales in any jurisdiction, and has provided plans acceptable to University, in its sole discretion, to commercialize Intellectual Property in the jurisdiction(s) that University intends to terminate.

***OPTION D*: Exclusive Commercial License with Pre-Set Royalty Terms**

Provided Sponsor uses its Internal Funds to pay for the entirety of the Total Agreement Price and the Additional Sponsor-Requested Insurance Cost, if applicable, University hereby grants Sponsor an exclusive, non-sublicensable (except to Affiliates or with prior written University approval), and royalty-bearing license to Intellectual Property to make, have made, use, import, offer to sell, and sell Products in all fields except Human Health (the “**Option D Exclusive License**”). In consideration for the Option D Exclusive License, Sponsor agrees to pay University an annual running royalty no later than January 31st each year (i.e., for the preceding calendar year) in accordance with the following table:

|  |  |  |
| --- | --- | --- |
| **Cumulative Net Sales  of Product(s)** | **Royalty Percentage** | **Description** |
| $1 - $999,999 | 1% | For cumulative Net Sales between $1 and $999,999, a 1% running royalty is required. |
| $1,000,000 - $9,999,999 | 2% | For cumulative Net Sales between $1,000,000 and $9,999,999, a 2% running royalty is required. |
| $10,000,000 - $19,999,999 | 3% | For cumulative Net Sales between $10,000,000 and $19,999,999, a 3% running royalty is required. |
| $20,000,000+ | 4% | For cumulative Net Sales exceeding $19,999,999, a 4% running royalty is required. |

(collectively, the “**Option D Exclusive License Running Royalty**”). The Option D Exclusive License is subject to the following additional terms and conditions:

1. Sponsor shall keep and preserve, in accordance with generally accepted accounting principles, complete and accurate books, records, and accounts containing all particulars that may be necessary for the purpose of showing the Option D Exclusive License Running Royalty payable to University, and shall provide University, each year no later than January 31st each year (i.e., for the preceding calendar year), an annual report disclosing annual and cumulative Net Sales with supporting documentation and calculations. Said report shall be forwarded to techtransfer@boisestate.edu.
2. Sponsor shall not include the name of University or of any employee of University, or any trade name, trademark, logo, or other designation of University in any advertising, any promotional or sales literature, on its website, for the purpose of raising capital, or any other publicity matter without the prior written approval of University’s Office of Trademark Licensing and Enforcement (licensing@boisestate.edu with a carbon copy to techtransfer@boisestate.edu). Notwithstanding the foregoing, Sponsor may use the name of University or of an employee of University in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent, and Sponsor is encouraged to acknowledge that the Intellectual Property was developed by University’s researchers.
3. Sponsor agrees to indemnify and hold harmless the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents from and against any and all claims, demands, causes of action whatsoever, costs of suit, and reasonable attorneys’ fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, arising out of, or resulting from the exercise or practice of the rights granted herein.
4. In no event shall the State of Idaho, University, or University’s Regents, officers, employees, students, contractors, or agents be liable for any indirect, special, consequential, or punitive damages (including, without limitation, damages for lost profits, expected savings, or other economic losses, or for injury to persons or property) arising out of, or in connection with, the rights granted herein, regardless of whether the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents know or should know of the possibility of such damages.

1. Beginning at the time when there is a Sale or distribution of any Product, including for the purpose of obtaining regulatory approvals, by a Commercializing Party, Sponsor shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $1,000,000.00 per incident and $2,000,000.00 annual aggregate, and Sponsor shall use reasonable efforts to have the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for Sponsor’s indemnification obligations herein; (iii) coverage for litigation costs; and (iv) intellectual property infringement coverage. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of Sponsor’s liability with respect to its indemnification obligations herein. Sponsor shall provide University with written evidence of such insurance within thirty (30) days of its required procurement, and Sponsor shall provide University with written notice (to rmi@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) at least fifteen (15) calendar days prior to the cancellation, non-renewal, or material change in such insurance.
2. University will confer with Sponsor to determine whether to prosecute any patent or obtain copyright or other protections for Intellectual Property. Sponsor shall be given reasonable opportunity to advise and comment upon the prosecution of such rights, and any Sponsor requests with regard to prosecution strategy shall be considered in good faith. University will maintain final authority in all decisions regarding the protection of Intellectual Property. University or its designee, using counsel of University’s choice who will take instructions solely from University, shall apply for and maintain all rights to the Intellectual Property at Sponsor’s expense. University will request that copies of all documents prepared by University’s counsel for submission to governmental intellectual property offices be provided to Sponsor for review and comment prior to filing, to the extent practicable under the circumstances. Within thirty (30) days of receipt of invoice from University, Sponsor shall, on an ongoing basis, reimburse University for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection.
3. Sponsor, at its sole expense, must enforce Intellectual Property against infringement by third parties and is entitled to retain recovery from such enforcement. Sponsor must notify University in writing (to contracts@boisestate.edu with a carbon copy to techtransfer@boisestate.edu) of any potential infringement of Intellectual Property within thirty (30) calendar days of Sponsor’s knowledge thereof. If Sponsor does not file suit against a substantial infringer within six (6) months of its knowledge thereof, then University may, in its sole discretion, enforce Intellectual Property on behalf of itself and Sponsor, with University retaining all recoveries from such enforcement, and/or reduce the license granted hereunder to non-exclusive. In any dispute involving an infringer, the Parties agree to cooperate fully with each other. At the request and expense of the Party bringing suit, the other Party will permit access, during regular business hours, to all relevant personnel, records, papers, information, samples, specimens, and the like in its possession.
4. This Option D Exclusive License expires upon the earliest of: (i) automatically, if Sponsor becomes bankrupt or insolvent, ceases business operations, and/or if the business of Sponsor shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of Sponsor or otherwise; (ii) upon thirty (30) calendar days written notice from University if Sponsor fails to timely pay the Option D Exclusive License Running Royalty or University’s invoices pursuant to the Agreement and for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property during the life of the Intellectual Property’s protection, unless, before the end of such thirty (30) calendar day notice period, Sponsor pays the Option D Exclusive License Running Royalty and all of University’s invoices pursuant to the Agreement and for all costs for the preparation, filing, prosecution, and maintenance of Intellectual Property; (iii) upon ninety (90) calendar days written notice from University if Sponsor breaches or defaults any other obligations under this Option D Exclusive License, unless, before the end of such ninety (90) calendar day notice period, Sponsor has cured the default or breach to University’s satisfaction and so notifies University, stating the manner of the cure; or (iv) at any time by mutual written agreement of the Parties.
5. Any time after three (3) years from the date Intellectual Property is disclosed to Sponsor, University has the right to terminate this Option D Exclusive License in any national political jurisdiction if Sponsor, within ninety (90) calendar days after receiving written notice from University of the intended termination, fails to provide written evidence satisfactory to University that Sponsor or a Commercializing Party(ies) has commercialized or is actively and effectively attempting to commercialize Intellectual Property in such jurisdiction(s). The following definitions apply to this clause: (i) “commercialized” means having Sales in such jurisdiction; and (ii) “actively and effectively attempting to commercialize” means having an effective, ongoing and active research, development, manufacturing, marketing, or sales program, as appropriate, directed toward obtaining regulatory approval, production, and/or Sales in any jurisdiction, and has provided plans acceptable to University, in its sole discretion, to commercialize Intellectual Property in the jurisdiction(s) that University intends to terminate.

***OPTION E*: Ownership of Intellectual Property with a One-Time Upfront Fee**

Provided Sponsor uses its Internal Funds to pay for the entirety of the Total Agreement Price, the Additional Sponsor-Requested Insurance Cost, if applicable, and the Option E Ownership Fee (defined below) and subject to the University’s reserved license in Intellectual Property set forth in Paragraph G, Intellectual Property, of the Agreement, University shall assign to Sponsor all of University’s rights in the Intellectual Property (“**Option E Ownership**”). University shall promptly sign and deliver any necessary documents and take any necessary actions that Sponsor reasonably requests to establish and perfect the rights herein assigned to Sponsor. In consideration for the Option E Ownership, Sponsor will pay University a fee of either twenty-five percent (25%) of the Total Agreement Price or sixty-two thousand five hundred U.S. dollars ($62,500.00), whichever is greater (the “**Option E Ownership Fee**”), within thirty (30) days of execution of the Agreement. The Option E Ownership is not available in the Human Health field and is subject to the following additional terms and conditions:

1. Sponsor shall not include the name of University or of any employee of University, or any trade name, trademark, logo, or other designation of University in any advertising, any promotional or sales literature, on its website, for the purpose of raising capital, or any other publicity matter without the prior written approval of University’s Office of Trademark Licensing and Enforcement (licensing@boisestate.edu with a carbon copy to techtransfer@boisestate.edu). Notwithstanding the foregoing, Sponsor may use the name of University or of an employee of University in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent, and Sponsor is encouraged to acknowledge that the Intellectual Property was developed by University’s researchers.
2. Sponsor agrees to indemnify and hold harmless the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents from and against any and all claims, demands, causes of action whatsoever, costs of suit, and reasonable attorneys’ fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, arising out of, or resulting from the exercise or practice of the rights granted herein.
3. In no event shall the State of Idaho, University, or University’s Regents, officers, employees, students, contractors, or agents be liable for any direct, indirect, special, consequential, or punitive damages (including, without limitation, damages for lost profits, expected savings, or other economic losses, or for injury to persons or property) arising out of, or in connection with, the rights granted herein, regardless of whether the State of Idaho, University, and University’s Regents, officers, employees, students, contractors, and agents know or should know of the possibility of such damages.

1. Any time after three (3) years from the date Intellectual Property is assigned to Sponsor, University has the right to obtain a commercial, non-exclusive, sublicensable, perpetual, and royalty-free license to Intellectual Property in all fields and any national political jurisdiction if Sponsor, within one hundred eighty (180) calendar days after receiving written notice from University of the intended license, fails to provide written evidence that Sponsor or a Commercializing Party(ies) has commercialized or is actively and effectively attempting to commercialize Intellectual Property. The following definitions apply to this clause: (i) “commercialized” means having Sales in such jurisdiction or if a process, implementation of the Intellectual Property; and (ii) “actively and effectively attempting to commercialize” means having an effective, ongoing and active research, development, manufacturing, marketing, or sales program, as appropriate, directed toward obtaining regulatory approval, production, process implementation, and/or Sales in any jurisdiction, and/or has provided plans to University to commercialize or implement Intellectual Property in any jurisdiction(s).

**MODE OF PAYMENT AND CURRENCY**

All payments due under this Agreement are expressed in and shall be paid in U.S. Dollars (USD) to “Boise State University” and will be made by delivery to the following:

**By ACH/Wire**

JPMorgan Chase

New York, NY 10017

ABA # 028000024

SWIFT:  CHASUS33

For Credit to:

Boise State University

Account # 20000011141546

*All amounts paid for an upfront commercial license or ownership under this Agreement are nonrefundable*. Any questions regarding upfront license or ownership payments can be addressed to the Office of Technology Transfer at techtransfer@boisestate.edu.