**INDUSTRY-SPONSORED RESEARCH AGREEMENT**

Agreement No. [NUMBER]

THIS INDUSTRY-SPONSORED RESEARCH AGREEMENT (“**Agreement**”) is entered into by and between [SPONSOR LEGAL NAME], [A/AN ENTITY TYPE AND JURISDICTION] with its principal place of business located at [ADDRESS] (“**Sponsor**”), and BOISE STATE UNIVERSITY, a State of Idaho public institution of higher education located at 1910 University Drive, Boise, Idaho 83725-1135 ("**University**"). Sponsor and University may be collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

WHEREAS, University is a Metropolitan Research University with experience and resources in a field of mutual interest between University and Sponsor; and

WHEREAS, Sponsor desires research to be performed in accordance with the terms of this Agreement and the Scope of Work in Exhibit A of this Agreement, attached hereto and incorporated herein by this reference (the “**Scope of Work**”); and

WHEREAS, Sponsor is a for-profit business entity that will use its own Internal Funds (see definition in the Upfront Intellectual Property Terms) to pay for University’s performance of the Scope of Work and Sponsor’s rights in Intellectual Property;

WHEREAS, the performance of the Scope of Work is consistent, compatible, and beneficial to the academic role and mission of University; and

WHEREAS, University, consistent with its Strategic Plan (Blueprint for Success 2021 – 2026), desires to increase industry-sponsored research and creative activities to (1) better integrate career education and experiential learning opportunities into the curriculum and the student experience to improve career readiness and post-graduation outcomes, and (2) leverage existing partnerships and programs and develop new opportunities with employers and private partnerships to address workforce, research, educational, and service needs; and

WHEREAS, the Parties wish to further define their relationship through the use of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, mutual promises hereinafter contained, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. SCOPE OF WORK: University agrees to perform the Scope of Work.

B. TERM: This Agreement shall be effective commencing on [DATE] (the “**Effective Date**”) and shall terminate on [DATE] unless sooner terminated as provided herein or extended by written agreement of the Parties (the “**Term**”).

C. PAYMENT; INVOICES: In consideration of University’s performance of the Scope of Work, Sponsor agrees to pay University a firm fixed price amount of *[WRITTEN DOLLAR AMOUNT and XX/100ths Dollars*] ($[AMOUNT]) (“**Total Agreement Price**”), payable as follows: (1) fifty percent (50%) ($[AMOUNT]) due and payable to University immediately upon execution of the Agreement and receipt of University’s invoice; (2) forty percent (40%) ($[AMOUNT]) due and payable to University on or about [DATE] (approximately mid-project) upon receipt of University’s invoice; and (3) ten percent (10%) ($[AMOUNT]) upon University’s substantial completion of the Scope of Work and receipt of University’s invoice. The Total Agreement Price may be changed by a written modification of this Agreement signed by both Parties. Payments not received by University within thirty (30) days of the due date(s) are considered past due.

Sponsor understands and expressly agrees this is a firm fixed price Agreement. University is under no obligation to provide Sponsor with any kind of financial reporting, supporting documentation, or justification of expenditures made in the performance of the Scope of Work as a condition of payment. University will not request additional funds if University’s cost to complete the Scope of Work exceeds the Total Agreement Price (other than the Additional Sponsor-Requested Insurance Cost (defined below), if applicable), and no portion of the Total Agreement Price will be returned to Sponsor upon University’s completion of the Scope of Work (even if University’s cost to complete the Scope of Work is less than expected).

D. REPORTING REQUIREMENTS: University will provide reports, if any, in accordance with the Scope of Work.

E. CONFIDENTIALITY:

1. These confidentiality terms shall apply to all information disclosed by a disclosing Party (“**Disclosing Party**”) to a receiving Party (“**Receiving Party**”) on or after the Effective Date pursuant to the Scope of Work, regardless of the medium on which the information is stored, recorded, conveyed, or communicated, whether or not specifically identified as confidential or proprietary, including but not limited to the following: (a) cost, pricing, profit, production, and other accounting, economic, and financial data; (b) technical drawings, product designs, artistic and scientific data, product specifications, machine or equipment specifications, process flow documents, and manufacturing know-how; (c) ideas for research and development; (d) source code and other computer software (including software that is proprietary to third parties); (e) results, records, text, samples, prototypes, photographs, graphic representations, and audiovisual works; (f) information that Disclosing Party must keep confidential as a result of obligations to third parties, if such obligation is conveyed to the Disclosing Party; (g) inventions, whether or not patentable; (h) information about the identity of Disclosing Party’s or its Affiliates’ (defined below) customers and suppliers; (i) personnel and human resources data, files, and other employee information; (j) business and marketing plans, strategies, policy statements, and forecasts; (k) information to which Receiving Party has access while on Disclosing Party’s business premises; (l) trade secrets; and (m) summaries, excerpts, compilations, and notes prepared by Receiving Party or others specifically containing any of the preceding proprietary and confidential information (all, collectively, “**Confidential Information**”). Any third-party proprietary and confidential information properly disclosed by Disclosing Party to Receiving Party under this Agreement shall be considered Confidential Information of Disclosing Party and shall be subject to all of the restrictions on disclosure contained herein.
2. Confidential Information shall not include any information which Receiving Party can establish by competent written proof:
3. was in the public domain as of the Effective Date or comes into the public domain during the Term through no fault of Receiving Party;
4. was known to Receiving Party prior to the Effective Date and was not acquired, directly or indirectly, from Disclosing Party or from a third party under a continuing obligation of confidentiality or limited use;
5. was independently developed by Receiving Party without knowledge of or assistance from the Confidential Information; or
6. was lawfully disclosed to Receiving Party from a third party who did not require Receiving Party to hold it in confidence or limit its use and who did not acquire it, directly or indirectly from Disclosing Party under a continuing obligation of confidentiality.
7. Receiving Party will not use any Confidential Information of Disclosing Party for any reason other than the furtherance of the Scope of Work without the prior written consent of Disclosing Party. Receiving Party agrees to restrict the review and use of Confidential Information solely for the performance of the Scope of Work. Receiving Party may disclose Confidential Information to its directors, officers, and employees (all, collectively, “**Representatives**”), Affiliates, and external legal counsel assisting in making an evaluation of the Confidential Information on a need-to-know basis; provided, however, that such Representatives, Affiliates, and external legal counsel are advised of and agree in writing, or are otherwise obligated by existing agreements, state or federal statutes, or formal written codes of professional conduct, to comply with the confidentiality and non-use obligations in this Agreement. For purposes of this Agreement, Representatives, Affiliates, and external legal counsel are not considered “third parties.” Receiving Party will not disclose Confidential Information to third parties unless it obtains the prior written consent of Disclosing Party. Prior to any such disclosure to a third party, Receiving Party shall first obtain a written non-disclosure agreement from such third party containing terms and conditions substantially similar to those set forth herein. If requested, a copy of such executed agreement will be provided to Disclosing Party. “**Affiliate(s)**” means any legal entity that directly or indirectly controls a Party (hereinafter “**Parent Company**”), or is controlled by a Party or its Parent Company. “**Control**” means direct or indirect ownership of more than fifty percent (50%) of the stock of such entity, or more than a fifty percent (50%) interest, direct or indirect, in the decision-making authority of such entity.
8. In handling Confidential Information, Receiving Party covenants and agrees (a) to use the same care and discretion as it employs with its own proprietary/confidential information (but in no event less than reasonable care and discretion) to prevent disclosure, publication, or dissemination of Confidential Information, and (b) except as permitted pursuant to this Agreement, not to use, duplicate, reproduce, copy, reverse engineer, distribute, disclose, or otherwise disseminate Confidential Information.
9. If Receiving Party is legally required by court order, law, or other governmental regulation or authority to disclose certain Confidential Information received from Disclosing Party (a “**Governmental Disclosure Obligation**”), Receiving Party will to the extent reasonably practicable and legally permissible: (a) promptly notify Disclosing Party of the Governmental Disclosure Obligation and provide a reasonable opportunity for Disclosing Party to object to such disclosure and to seek a protective order at the Disclosing Party’s expense; (b) consult in good faith with Disclosing Party regarding possible responses to the Governmental Disclosure Obligation; and (c) if disclosure is, in Receiving Party’s sole discretion, required to prevent Receiving Party from being noncompliant with applicable law or subject to contempt sanctions or other penalties related to the Governmental Disclosure Obligation, disclose only the Confidential Information that is legally required to be disclosed, consistent with a reasonable interpretation of the Governmental Disclosure Obligation.
10. Notwithstanding any other provision of this Agreement, Receiving Party may retain one (1) copy of the Disclosing Party’s Confidential Information in its confidential files for the sole purpose of establishing compliance with the terms hereof.

[ ]  **(The following SUBPARAGRAPH e(7) only applies if the preceding box is selected in this manner: ☒.)**

1. Each Party shall maintain a stated information technology security program with particular standards (e.g., CIS Critical Security Controls) and designated employee(s) to coordinate internally and with the other Party (the “**ITSP**”). The Parties’ ITSPs are not required to be certified by a third party, but each Party is required to comply with the requirements of its ITSP. Upon request by a Party and/or its regulator(s) (the “**Requesting Party**”), the other Party (the “**Responding Party**”) shall promptly make its ITSP policies, procedures, and compliance records available for Requesting Party’s inspection, audit, and copying at reasonable times during Responding Party’s normal business hours. If Receiving Party becomes aware of any actual or suspected security breach that compromises or could compromise Disclosing Party’s Confidential Information, Receiving Party will promptly notify Disclosing Party’s notice contact(s) and thereafter coordinate with Disclosing Party to investigate and remedy such breach in a timely manner. Should the Parties collectively agree that Responding Party is not compliant with its ITSP, Responding Party shall promptly remedy the noncompliance at its own cost.

F. PUBLICATION:

1. University, as an Idaho public institution of higher education, engages only in research and creative activities that are compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of Scope of Work must be reasonably available for publication and/or presentation (collectively, “**Publish**” or “**Publication**”). The Parties agree that both Parties shall have the right to Publish results from this Agreement, but a Party desiring to Publish results (“**Publishing Party**”) shall submit to the other Party (“**Non-Publishing Party**”) a copy of any proposed Publication at least thirty (30) days prior to the Publication submission date (or Publication date if there is no prior submission requirement for the Publication, e.g., certain presentations) (the “**Publication Notice Period**”). The Parties agree that the following will not be included in any Publication without prior written approval from the Non-Publishing Party: (a) Confidential Information of the Non-Publishing Party; and (b) if Sponsor selects Option E, Ownership of Intellectual Property with a One-Time Upfront Fee, in paragraph G(2) below and is otherwise in compliance with the terms and conditions of this Agreement, including payment of the Total Agreement Price, the Additional Sponsor-Requested Insurance Cost, if applicable, and the Option E Ownership Fee (see Upfront Intellectual Property Terms defined below), the portion(s) of the Intellectual Property (defined below) that Sponsor reasonably determines to be trade secrets (“**Generated Trade Secrets**”). During the Publication Notice Period, the Non-Publishing Party shall have the rights to: (a) review the proposed Publication for Generated Trade Secrets and its Confidential Information; (b) assess the patentability of any invention described in the proposed Publication; and (c) provide non-binding comments to the Publishing Party about the remainder of the proposed Publication. At the Non-Publishing Party’s request, Publishing Party shall: (a) remove from the Publication any Generated Trade Secrets and Confidential Information of the Non-Publishing Party; (b) delay the Publication an additional sixty (60) days to file patent application(s) (the “**Patent Application Period**”); and (c) concurrently with the Patent Application Period, if applicable, or otherwise for a period not to exceed ten (10) days after the Publication Notice Period ends, collaboratively discuss Non-Publishing Party’s other non-binding comments about the proposed Publication with the goal of resolving Non-Publishing Party’s questions and/or concerns in Publishing Party’s sole discretion.
2. Results under this Agreement are not intended to imply University endorsement of a particular political candidate, political view, or any commercial or non-commercial product. Sponsor’s citation of University’s results under this Agreement must include a disclosure of Sponsor’s financial support to University for the performance of the Scope of Work.

G. INTELLECTUAL PROPERTY:

1. “**Intellectual Property**” means all discoveries, inventions, designs, methodologies, improvements, software, data, and works of authorship, conceived, made, discovered, written, or first reduced to practice in performance of the Scope of Work and any related rights such as patents, copyrights (including moral rights), mask works, and trade secrets, upon which a University employee is an inventor, author, or creator.
2. The full text of University’s *Industry-Sponsored Research Agreement Intellectual Property Terms Upfront Commercial Licenses* (Effective September 8, 2023) is located at <https://www.boisestate.edu/research-osp/industry-sponsored-research/> (collectively, the “**Upfront Intellectual Property Terms**”). Subject to the Upfront Intellectual Property Terms, Sponsor may select one of the five (5) mutually exclusive options listed below (i.e., in this manner ☒) to apply to this Agreement:

[ ]  **Option A**: Term-Limited, Non-Exclusive, and Royalty-Free Commercial License with an Option to Negotiate an Exclusive License (Additional Cost: Greater of 5% of the Total Agreement Price or $3,500)

[ ]  **Option B**: Non-Exclusive and Royalty-Free Commercial License with an Option to Negotiate an Exclusive License (Additional Cost: Greater of 10% of the Total Agreement Price or $7,500)

[ ]  **Option C**: Exclusive and Royalty-Free Commercial License with a One-Time Upfront Fee (Additional Cost: Greater of 20% of the Total Agreement Price or $50,000)

[ ]  **Option D**: Exclusive Commercial License with Pre-Set Royalty Terms (Additional Cost: Escalating royalties of up to 4% of cumulative Net Sales as defined in the Upfront Intellectual Property Terms)

[ ]  **Option E**: Ownership of Intellectual Property with a One-Time Upfront Fee (Additional Cost: Greater of 25% of the Total Agreement Price or $62,500)

If none of the options above is selected, none of the above options shall apply. Instead, University hereby grants to Sponsor a non-sublicensable (except to Affiliates or with prior written University approval),
non-exclusive, non-transferable, perpetual, and royalty-free license to use Intellectual Property exclusively for Sponsor’s own internal research, development, and teaching purposes (but not for any sales, licensing, or similar commercial purpose).

1. Sponsor shall have the first right to negotiate: (i) a fee-bearing or royalty-bearing non-exclusive or exclusive license or a fee-bearing option to Intellectual Property, provided that Sponsor agrees that in any exclusive license, Sponsor will be required to pay all costs for the preparation, filing, prosecution, and maintenance of any patents or copyrights on such Intellectual Property; or (ii) ownership of Intellectual Property (collectively, the “**Negotiation Right**”). Sponsor has ninety (90) days following the disclosure of Intellectual Property by University to exercise its Negotiation Right (“**Negotiation Period**”). Sponsor must submit a written notice to University, within the Negotiation Period, in order to exercise its Negotiation Right. If the Negotiation Period expires before University receives Sponsor’s written notice exercising the Negotiation Right, Sponsor shall have no further rights to Intellectual Property except as non-exclusively licensed in this paragraph above. If Sponsor exercises the Negotiation Right during the Negotiation Period, the Parties shall diligently negotiate the terms of a non-exclusive or exclusive license, a fee-bearing option, or ownership to/of Intellectual Property. If, in good faith, the Parties do not reach an agreement and finalize a non-exclusive or exclusive license, a fee-bearing option, or ownership to/of Intellectual Property within six (6) months from the date of disclosure of Intellectual Property to Sponsor, University will have no further obligation to Sponsor and will be free to commercialize Intellectual Property in its sole discretion, provided that Sponsor shall retain its rights to Intellectual Property as non-exclusively licensed in this paragraph above.
2. REGARDLESS OF WHICH OPTION IS SELECTED (OR IF NO OPTION IS SELECTED), UNIVERSITY RETAINS AT LEAST AN IRREVOCABLE, WORLDWIDE, ROYALTY-FREE, SUBLICENSABLE, AND NON-EXCLUSIVE RIGHT TO USE INTELLECTUAL PROPERTY FOR TEACHING, RESEARCH, AND EDUCATIONAL PURPOSES. University shall have the right to sublicense its rights under this section to one or more non-profit academic or research institutions for their teaching, research, and educational purposes. If Option E, Ownership of Intellectual Property with a One-Time Upfront Fee, is selected, University shall retain the right to continue to research, develop, modify, or otherwise enhance the Intellectual Property (the “**Improved Intellectual Property**”). University retains all right, title, and interest and is free to practice or use the Improved Intellectual Property for any lawful purpose of the University.
3. University and Sponsor shall identify in Exhibit B, Implicated Background Intellectual Property, of this Agreement, attached hereto and incorporated herein by this reference, their known background intellectual property conceived, reduced to practice, authored, created, or developed prior to the Effective Date or in the performance of activities independent of this Agreement that (i) blocks the exercise of the rights in Intellectual Property provided above and/or (ii) would necessarily be infringed by the commercialization of Intellectual Property (collectively, “**Implicated Background Intellectual Property**”). The Parties recognize that each Party will use reasonable efforts to list all Implicated Background Intellectual Property in Exhibit B, but Implicated Background Intellectual Property may exist that is not identified. Neither Party shall be liable to the other Party for the failure to list Implicated Background Intellectual Property in Exhibit B. Notwithstanding the foregoing, upon Sponsor’s written request and contemporaneous payment of the Implicated Background Intellectual Property Fees (defined below) and solely to the extent University is legally able to do so, University will grant to Sponsor, for an amount equal to the summed total of all Implicated Background Intellectual Property License Fees set forth in Exhibit B (collectively, the “**Implicated Background Intellectual Property License Fees**”), a non-sublicensable (except to Affiliates or with prior written University approval), non-exclusive, and royalty-free license to Implicated Background Intellectual Property for any lawful purpose to make, have made, use, import, offer to sell, and sell Products (as defined in the Upfront Intellectual Property Terms) in any field; *provided*, (i) University’s Implicated Background Intellectual Property licensed to Sponsor pursuant to this subparagraph is subject to sections 1 – 6 of the Option B Non-Exclusive License specified in the Upfront Intellectual Property Terms (except that references to the “Option B Non-Exclusive License Fee” shall not apply) and (ii) if no Implicated Background Intellectual Property License Fees are set forth in Exhibit B and/or Implicated Background Intellectual Property is omitted from Exhibit B, the Implicated Background Intellectual Property License Fees shall not exceed ten thousand U.S. dollars ($10,000.00) per individual University invention or creative works disclosure (each a “**University File Number**”). No other rights to University’s and Sponsor’s background intellectual property (i.e., Implicated Background Intellectual Property and other background intellectual property) are granted under the terms of this Agreement.

# H. EQUIPMENT & SUPPLIES: Unless otherwise provided in the Scope of Work, all equipment and supplies purchased with funds provided under this Agreement for use in connection with this Agreement shall be the exclusive property of University in perpetuity, and shall be utilized in part in order to complete the Scope of Work during the Term.

I. LIABILITY; INSURANCE:

1. Each Party hereto agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees, to the full extent required by law. Liability of University is at all times herein strictly limited and controlled by the provisions of Idaho law, including, without limitation, the Idaho Tort Claims Act, Idaho Code §§ 6-901 *et seq.* as amended from time to time (the “**ITCA**”). Nothing herein shall be deemed to constitute a waiver of any privilege, immunity, protection, or defense afforded University, as an entity of the State of Idaho, under the Idaho Constitution, the ITCA, Idaho statutes, or any other applicable law.
2. Each Party agrees it maintains comprehensive general liability insurance and all coverages required by law sufficient for the purpose of carrying out the duties and obligations arising under this Agreement. University shall maintain, at all times applicable hereto, comprehensive liability coverage in such amounts as are prescribed by Idaho Code § 6-924 as amended from time to time, as well as worker’s compensation coverage for its employees as required by Idaho Code § 72-301 as amended from time to time. University’s liability coverage obligations shall be administered by the Administrator of the Division of Insurance Management in the Department of Administration for the State of Idaho, and may be covered, in whole or in part, by the State of Idaho’s Retained Risk Program. University shall cover its liability for worker’s compensation through the State of Idaho’s State Insurance Fund. Upon written request, a Party will furnish the other Party a certificate evidencing the insurance required by this subparagraph I(2).

[ ]  **(The following SUBPARAGRAPHS I(3) TO I(6) only applY if the preceding box is selected in this manner: ☒.)**

1. Notwithstanding the foregoing, if it is reasonably available from commercial sources and acceptable to both Parties, University will acquire and maintain during the Term at Sponsor's sole cost the following Additional Sponsor-Requested Insurance (defined below and individually selected as applicable to the Agreement in this manner: ☒) procured from commercial carriers and not the State of Idaho (e.g., NOT from Idaho's Retained Risk Program) specifically for this particular Agreement and Scope of Work. Additional Sponsor-Requested Insurance shall name Sponsor as an additional insured for all coverages of the Additional Sponsor-Requested Insurance and contain a waiver of subrogation against Sponsor and its affiliates, agents, and employees. All insurers providing the Additional Sponsor-Requested Insurance shall have a Best’s rating of A- or better and be licensed and admitted in Idaho.

[ ]  ***Commercial General Liability.*** Commercial General Liability insurance with available limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate on a claims made basis and covering claims made during the policy period and reported within three (3) years of the date of occurrence for bodily injury, property damage, premises, operations, and contractual liability (including, without limitation, that liability specifically assumed pursuant to subparagraph I(4) below).

[ ]  ***Business Automobile Liability.*** Business Automobile Liability insurance covering all applicable vehicles whether owned, hired, rented, borrowed, or otherwise, with available limits of not less than $1,000,000 combined single limit on a claims made basis and covering claims made during the policy period and reported within three (3) years of the date of occurrence for bodily injury and property damage.

[ ]  ***Professional Liability.*** Errors and omissions insurance with available limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate on a claims made basis and covering claims made during the policy period and reported within three (3) years of the date of occurrence.

[ ]  ***Cyber Liability Insurance.*** Information security/cyber liability insurance with not less than $1,000,000 per occurrence and $2,000,000 in the aggregate on a claims made basis and covering claims made during the policy period and reported within three (3) years of the date of occurrence for claims and losses resulting from wrongful or negligent acts committed in the performance of, or failure to perform, the Scope of Work, including, without limitation, coverages for: (a) costs of defending any claims or lawsuits filed because of system failure or security breach; (b) costs of notifying all individuals who have been affected, as well as providing twelve (12) months of credit monitoring services for the affected individuals after the affected individuals’ confidential information has been compromised; (c) regulatory fines or penalties that are levied as a result of the system failure or security breach; (d) computer virus liability when authorized users’ systems are infected by computer viruses; and (e) errors and omissions coverage to cover alleged failures by software and/or systems.

All of the above insurance, individually selected as applicable to the Scope of Work above, is collectively referred to herein as the “**Additional Sponsor-Requested Insurance**.”

1. Strictly subject to the limits and coverages of the Additional Sponsor-Requested Insurance, University, solely through its insurer(s) providing the Additional Sponsor-Requested Insurance and solely to the extent of such insurance, shall indemnify and hold harmless Sponsor from covered liability, claims, damages, costs, expenses, and actions, including reasonable attorneys’ fees and court costs, caused by, arising from, or related to the negligent or wrongful acts or omissions of University, its employees, agents, vendors, or subcontractors during the performance of this Agreement and the Scope of Work. SPONSOR SPECIFICALLY UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT UNIVERSITY SHALL NOT INDEMNIFY, DEFEND, OR HOLD HARMLESS SPONSOR, ITS EMPLOYEES, AGENTS, VENDORS, OR SUBCONTRACTORS FOR ANY LIABILITY, CLAIMS, DAMAGES, COSTS, EXPENSES, AND/OR ACTIONS, INCLUDING ATTORNEYS’ FEES AND COURT COSTS: (A) NOT COMPLETELY COVERED BY THE ADDITIONAL SPONSOR-REQUESTED INSURANCE AND COMPLETELY PAID FOR BY UNIVERSITY’S INSURER(S); OR (B) CAUSED BY, ARISING FROM, OR RELATED TO THE NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF SPONSOR, ITS EMPLOYEES, AGENTS, VENDORS, OR SUBCONTRACTORS. For avoidance of doubt, University and the State of Idaho, including the Idaho Retained Risk Program, shall not in any event or under any circumstances indemnify OR HOLD HARMLESS Sponsor, ITS EMPLOYEES, AGENTS, VENDORS, OR SUBCONTRACTORS with appropriated or local funds.
2. To reimburse University for acquiring and maintaining the Additional Sponsor-Requested Insurance during the Term, Sponsor agrees to pay University the actual cost of the Additional Sponsor-Requested Insurance of *[WRITTEN DOLLAR AMOUNT]* ($[AMOUNT]) (the “**Additional Sponsor-Requested Insurance Cost**”) within thirty (30) days of receiving an invoice from University. If the payment for the Additional Sponsor-Requested Insurance Cost is not received by University within thirty (30) days of the invoice due date, it is considered past due. The Additional Sponsor-Requested Insurance Cost is in addition to Sponsor's obligation to pay the Total Agreement Price. For avoidance of doubt, Sponsor shall pay University the Total Agreement Price and the Additional Sponsor-Requested Insurance Cost. Should the Parties extend the Term, modify the Scope of Work, or otherwise make substantive changes to this Agreement that increase the Additional Sponsor-Requested Insurance Cost, Sponsor will be solely responsible for the increased costs.
3. EVEN IF THE ADDITIONAL SPONSOR-REQUESTED INSURANCE EXCLUDES AND/OR IS NOT SUFFICIENT TO COVER ANY INDEMNITY OR HOLD HARMLESS OBLIGATIONS, CLAIMS, SUITS, ACTIONS, DAMAGES, INJURIES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEY’S FEES AND COURT COSTS, OR ANY OTHER LIABILITY OR POTENTIAL LIABILITY WHATSOEVER, NOTHING HEREIN SHALL BE DEEMED TO:
(A) INCREASE UNIVERSITY'S OR THE STATE OF IDAHO’S LIABILITY UNDER THIS AGREEMENT; (B) ATTEMPT TO LIMIT THE IDAHO CONSTITUTION OR IDAHO STATUTES, REGULATIONS, OR ATTORNEY GENERAL OPINIONS (E.G., IDAHO CONSTITUTION ARTICLE VII, SECTION 11 AS AMENDED FROM TIME TO TIME; IDAHO CODE SECTIONS 6-901 TO 6-929, 59-1015 TO 59-1017, AND 72-301 TO 72-334 AS AMENDED FROM TIME TO TIME; IDAHO ATTORNEY GENERAL OPINION NO. 19-1); OR (C) CONSTITUTE A WAIVER OF ANY PRIVILEGE, IMMUNITY, PROTECTION, OR DEFENSE AFFORDED UNIVERSITY, AS AN ENTITY OF THE STATE OF IDAHO, UNDER THE IDAHO CONSTITUTION, ITCA, IDAHO STATUTES, OR ANY OTHER APPLICABLE LAW.

J. DELIVERABLES; DISCLAIMER: University will make efforts to ensure that all deliverables provided under this Agreement are provided substantially in accordance with the Scope of Work. RESEARCH RESULTS, DELIVERABLES, REPORTS, INTELLECTUAL PROPERTY DISCLOSURES, AND INTELLECTUAL PROPERTY PROVIDED BY UNIVERSITY AND SPONSOR ARE PROVIDED STRICTLY “**AS IS, WHERE IS**” WITHOUT ANY REPRESENTATION, WARRANTY, OR GUARANTEE OF ANY KIND, INCLUDING AS TO THE OPERABILITY OR FITNESS FOR ANY USE, SAFETY, EFFICACY, APPROVABILITY BY REGULATORY AUTHORITIES, TIME AND COST OF DEVELOPMENT, PATENTABILITY, OR BREADTH OF INTELLECTUAL PROPERTY. UNIVERSITY AND SPONSOR ALSO MAKE NO REPRESENTATION THAT INTELLECTUAL PROPERTY DOES NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHTS HELD OR THAT WILL BE HELD BY OTHERS OR BY UNIVERSITY OR SPONSOR, OR THAT UNIVERSITY OR SPONSOR WILL FURNISH THE OTHER PARTY WITH ANY KNOW-HOW, TECHNOLOGY, TECHNOLOGICAL INFORMATION, OR NEW DEVELOPMENTS NOT PROVIDED IN THE INTELLECTUAL PROPERTY LICENSED HEREIN. ALL WARRANTIES, EXPRESS AND IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED BY UNIVERSITY AND SPONSOR, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

K. USE OF TRADENAMES AND SERVICE MARKS: Neither Party obtains by this Agreement any right, title, or interest in, or any right to reproduce or to use for any purpose, the name, tradenames, trade- or service marks, or logos (collectively, the “**Marks**”) of the other Party. Neither Party will include the name of the other Party or of any employee of that Party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other Party. In the case of University, prior written approval is required from the Office Trademark Licensing and Enforcement (licensing@boisestate.edu). In the case of Sponsor, prior written approval is required from an authorized representative of Sponsor.

L. TERMINATION FOR CONVENIENCE: Either Party may terminate this Agreement, without cause, upon not less than sixty (60) days’ written notice, given in accordance with the Notice provisions of this Agreement. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the termination date. Upon early termination of this Agreement by Sponsor, Sponsor shall pay all costs accrued by University as of the date of termination, including, without limitation, non-cancelable obligations for the Term (which shall include all appointments of staff incurred prior to the effective date of the termination). University shall exert its best efforts to limit or terminate any outstanding financial commitments for which Sponsor is to be liable. University shall furnish, within ninety (90) days of the effective termination date, a final report of all costs incurred and all funds received, and shall reimburse Sponsor for payments that may have been advanced in excess of University’s total costs incurred.

M. TERMINATION FOR DEFAULT: A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement, and such failure continues for thirty (30) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement at the end of the thirty (30) day period specified in the notice, and may seek such other and further relief as may be provided by law. Notwithstanding the foregoing, in the event of a breach or threatened breach of paragraph C, E, or G of this Agreement, the non-defaulting Party may terminate the Agreement immediately without affording the defaulting Party the opportunity to cure, and may seek an injunction or restraining order as required to prevent unauthorized disclosures of Confidential Information or unauthorized use of its Marks, Intellectual Property, and/or background intellectual property.

N. NOTICES: All notices related to this Agreement shall be in writing, directed to the designated representatives of the Parties as indicated below, and delivered by (a) certified mail with return receipt requested, (b) hand delivery with signature or certification, or (c) email. For official email notice, (a) the email subject line must include at least “Official Agreement Notice – Agreement No. [Agreement Number at the Top of Page 1 of the Agreement]” and (b) the email must include a PDF copy of this Agreement. Notice shall be deemed effective on the date received. The Parties agree to actively maintain their respective email addresses listed below, but the Parties may change their notice contacts, including email addresses, at any time by written notice to all Parties. The initial representatives of the Parties are as follows:

 University’s Notice Contact:

 Grants and Contracts Officer

Office of Sponsored Programs

 Boise State University

 1910 University Drive

 Boise, ID 83725-1135

 E-mail: sponsoredagreements@boisestate.edu with a copy to contracts@boisestate.edu

 Phone: (208) 426-4420

 Sponsor’s Notice Contact:

[NAME]

[TITLE]

[ADDRESS]

[CITY, STATE POSTAL CODE]

Email: [EMAIL ADDRESS]

Phone: [PHONE NUMBER]

O. OTHER CONTRACT TERMS:

 (1) *Legal Authority*: Each Party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, articles of incorporation/organization, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory(ies) to execute this Agreement and to bind it to its terms. The person(s) executing this Agreement on behalf of a Party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement shall not be binding upon University, its governing board, or the State of Idaho unless signed by University’s Associate Vice President of Sponsored Programs or her/his authorized designee.

 (2) *Entire Agreement, Changes, and Amendment*: This Agreement constitutes the entire agreement between the Parties and supersedes all previous contracts, understandings, or agreements of the Parties, whether verbal or written, concerning the subject matter of this Agreement. No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.

(3) *Governing Law, Jurisdiction, and Venue*: Each Party agrees to comply with all applicable federal, state, and local laws, codes, regulations, rules, and orders in the performance of this Agreement. This Agreement shall be governed by and construed under the laws of the State of Idaho without regard to its conflict of law provisions. All disputes shall first be attempted to be resolved informally in good faith between the Parties. All claims for disputes arising under or related to this Agreement which cannot be resolved informally in good faith between the Parties shall be filed and tried in the State or Federal courts located in Ada County, State of Idaho, USA.

 (4) *Assignment*: This Agreement shall not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors, heirs, legal representatives, and permitted assigns of the Parties.

 (5) *Export Control*: The Parties acknowledge that activities covered by this Agreement may be subject to export control laws that prohibit or restrict: (i) transactions with certain persons; and/or
(ii) the type and level of Items (defined below) that may be exported, reexported, or deemed exported. These laws include, without limitation, the Arms Export Control Act, the Export Administration Act, the International Emergency Economic Powers Act, the Atomic Energy Act, and regulations issued pursuant to these statutes, including, without limitation, the Export Administration Regulations (15 CFR Parts 730–774) (“**EAR**”), the International Traffic in Arms Regulations (22 CFR Parts 120–130) (“**ITAR**”), the Office of Foreign Assets Control regulations (31 CFR Parts 500–598) (“**OFAC Regulations**”), and the Nuclear Regulatory Commission and Department of Energy export control regulations (10 CFR Parts 110 & 810) (“**NRC/DOE Regulations**”) (all, collectively, the “**Export Control Laws**”). Each Party acknowledges that: (i) Export Control Laws and export control requirements may change; (ii) it can contact the Nuclear Regulatory Commission and the U.S. Departments of Commerce, State, Energy, and Treasury for guidance as to applicable licensing requirements and other restrictions; and (iii) the export, reexport, or deemed export of controlled Items without a required export license or other governmental authorization may result in civil and criminal liability.

Each Party is responsible for its own compliance with Export Control Laws. Should it be necessary for the Parties to exchange Items which are known or suspected to be export controlled, the Party disclosing such controlled Items shall, prior to the disclosure or exchange: (i) give written notice to the other Party with the applicable Export Control Classification Number (“**ECCN**”) or other classification for such Items; and (ii) obtain written consent of the other Party’s export compliance officer. University’s export compliance officer is available at exportcontrols@boisestate.edu. The Parties agree to identify and label all controlled Items as export controlled and specify the cognizant authority (e.g., EAR, ITAR, OFAC Regulations, NRC/DOE Regulations) for such controlled Items. As used herein, the following terms shall mean: (i) “**Items**” — Commodities, Software, and Technology; (ii) “**Commodities**” — any article, material or supply except Technology and Software; (iii) “**Software**” — a collection of one or more programs or microprograms fixed in any tangible medium of expression; and (iv) “**Technology**” — specific information necessary for the development, production, or use of a product, including technical data and technical assistance.

 (6) *Waiver and Severability*: No waiver of any breach of any provision of this Agreement shall operate as a waiver of any other or subsequent breach thereof or of the provision itself, or of any other provision. No provision of this Agreement shall be deemed to have been waived unless such waiver be in writing and signed by the Party waiving the same, with the signature on behalf of University being that of the Associate Vice President of Sponsored Programs or her/his designee. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

 (7) *Independent Contractors*: It is understood and agreed by the Parties that University is an independent contractor with respect to Sponsor and that this Agreement is not intended and shall not be construed to create an employer/employee, partnership, or a joint venture relationship between University and Sponsor. University shall be free from the direction and control of Sponsor in the performance of University’s obligations under this Agreement, except that Sponsor may indicate specifications, standards, requirements, and deliverables for the satisfaction of University’s obligations under this Agreement.

 (8) *Conflict of Interest*: Except as set forth herein, Sponsor certifies that no officer, employee, student, contractor, or agent of University has been employed, retained, or paid a fee, or has otherwise received or will receive during or after the Term of this Agreement any personal compensation or consideration by or from Sponsor or any of Sponsor's directors, officers, employees, contractors, or agents in connection with the obtaining, arranging, negotiating, or conducting of this Agreement without advance, written notification to University.

 (9) *Headings*: Paragraph headings are for reference and convenience only and shall not be determinative of the meaning or the interpretation of the language of this Agreement.

(10) *Incorporation of Recitals and Exhibits*: The recitals and exhibits of this Agreement are incorporated herein by this reference as if set forth in full herein.

(11) *Time Periods*: All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days; *provided*, if the last date on which to perform any act or give any notice under this Agreement shall fall on a Saturday, Sunday, or local, state, or national holiday, such act or notice shall be deemed timely if performed or given on the next succeeding business day.

 (12) *Execution and Counterparts*: This Agreement may be executed with electronic signatures and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Facsimile signatures, electronic signatures, and e-mailed PDF copies of original signatures shall be deemed to be original signatures for all applicable purposes and in accordance with the Uniform Electronic Transactions Act, Idaho Code §§ 28-50-101 *et seq.* as amended from time to time.

(13) *Order of Precedence*: The following order of precedence, in descending order of importance, shall govern in the event of a conflict within this Agreement (including all exhibits) and/or between the text of this Agreement and any documents and/or agreements incorporated herein by reference: (i) paragraphs A through O of this Agreement; (ii) the Upfront Intellectual Property Terms;
(iii) Exhibit A of this Agreement; and (iv) Exhibit B of this Agreement. The Parties hereby agree that any legal terms or conditions contained in Exhibit A and/or Exhibit B of this Agreement shall have no force or effect even if they do not conflict with paragraphs A through O of this Agreement or the Upfront Intellectual Property Terms, and the Parties hereby expressly reject any such terms or conditions contained in the Exhibit A and/or Exhibit B of this Agreement. Non-exhaustive examples of legal terms or conditions include, without limitation, clauses regarding payment terms, intellectual property, confidentiality, publication, tangible property, representations, warranties, disclaimers, insurance, termination for default or convenience, choices of law and forum, and export controls.

(14) *Force Majeure*: Neither Party is responsible to the other for non-performance or delay in performance due to Acts of God or nature, wars, riots, epidemics, pandemics, public health directives, strikes, any act or order of public federal, state, or local authority including, without limitation, the State of Idaho, University leadership, or the Idaho State Board of Education, or any other cause, similar or dissimilar, beyond the control of the Parties (a “**Force Majeure Event**”). The University shall not be held responsible if, due to the occurrence of a Force Majeure Event, it is unable to perform any or all of its obligations under this Agreement, and University shall not be liable for any damages, including, without limitation, direct, consequential, incidental, compensatory, punitive, liquidated, or any other category of damages, which any party might suffer as a result thereof.

(15) *Certifications*: University is prohibited by state law from entering into certain contractual agreements. Sponsor hereby certifies that: (i) pursuant to Idaho Code Section 67-2346, if it is a company, the total value of the contractual agreement exceeds one hundred thousand dollars ($100,000), and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; (ii) pursuant to Idaho Code Section 67-2359, if it is a company, it is not currently owned or operated by the People’s Republic of China led by the Chinese communist party and will not for the duration of the Agreement be owned or operated by the People’s Republic of China; and (iii) except to the extent this Agreement is a contract or commercial transaction that is subject to a federal law related to Medicaid or a contract with a hospital as defined in Idaho Code, Section 39-1301, it is not an abortion provider or an affiliation of an abortion provider under the No Public Funds for Abortion Act. The terms in this paragraph defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. This certification is made solely to comply with the Idaho statutes referenced herein and to the extent such section does not contravene applicable State or federal law.

*[Signatures and Exhibits Follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below when signed by the last of the Parties.

**BOISE STATE UNIVERSITY: SPONSOR:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**EXHIBIT A**

**Scope of Work**

[PLACEHOLDER]

**EXHIBIT B**

**Implicated Background Intellectual Property**

**University’s Implicated Background Intellectual Property**

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| --- | --- | --- | --- | --- |
| **University File Number** | **Invention or Creative Work Title** | **Inventor(s)** | **Patent Number** *(If Applicable)* | **Implicated Background Intellectual Property License Fee** |
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**Sponsor’s Implicated Background Intellectual Property**

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| --- | --- | --- | --- |
| **Sponsor File Number** | **Invention or Creative Work Title** | **Inventor(s)** | **Patent Number** *(If Applicable)* |
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