A. CONFIDENTIALITY:

(1) Each Party has certain documents, data, information, and methodologies that are confidential and proprietary to that Party (“Confidential Information”). During the Term of this Agreement, either Party may, as the “Disclosing Party,” disclose its Confidential Information to the other Party (the “Recipient”), in writing, visually, or orally. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for such performance and agrees not to disclose the Confidential Information to any third party or parties, unless required by law, without the prior written consent of the Disclosing Party.

(2) Recipient shall use its reasonable best efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient’s own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information.

(3) “Confidential Information” shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which: is generally available to the public at the time of this Agreement; becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; has been independently developed by persons in Recipient’s employ or otherwise who have no contact with Confidential Information, as proven with written records.

(4) In the event that Recipient is required by law to disclose Confidential Information, it will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such disclosure.

(5) Notwithstanding any other provision of this Agreement, a Party may retain one copy of the other Party’s Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.

B. PUBLICATION: University, as a state institution of higher education, engages only in research and other activities that are compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of research and other activities must be reasonably available for publication. Parties acknowledge that University shall be free to publish or disseminate the results of the Project or otherwise treat such results as in the public domain, and it will conduct the Project activities in accord with National Security Decision Directive 189 and the applicable export control implementing regulations. University agrees that any proprietary information supplied to it by Sponsor during the course of the Project will not be included in any published material without prior approval by Sponsor.

Results under this Agreement are not intended to imply University endorsement of a particular political candidate, political views, or commercial product. Citation of University’s results under this Agreement by Sponsor must include a disclosure of Sponsor’s financial support to University of the Project activities performed under this Agreement.

C. INTELLECTUAL PROPERTY: “Intellectual Property” as used herein shall mean all discoveries, inventions, designs, methodologies, improvements, software, and works of authorship, conceived, made, discovered, written, or first reduced to practice in performance of the Project as described in
Exhibit A under this Agreement ("IP") and any related rights such as patents, copyrights (including moral rights), mask works and trade secrets.

(1) IP shall be owned as follows:

(a) IP created solely by one or more persons who are employees of University ("University IP") shall be owned by Boise State University, subject to the rights of its inventors in accordance with the policies of University.

(b) IP created solely by one or more persons who are employees of Sponsor ("Sponsor IP") shall be owned by Sponsor, subject to policies of Sponsor.

(c) IP jointly created by one or more employees of University and one or more employees of Sponsor ("Joint IP") shall be owned by University and licensed to Sponsor as stated under paragraph C(2) below.

(2) IP shall be licensed as follows:

(a) With the exception of student theses and dissertations, in consideration for sponsoring the project, University shall grant to Sponsor a non-exclusive, non-transferrable, perpetual, royalty-free license (without the right to sublicense) to use University IP and Joint IP exclusively for Sponsor’s own internal research and development purposes (and not for any commercial or for-profit purpose).

(b) University shall obtain a non-exclusive, perpetual, royalty-free license to use Sponsor IP for its own internal academic, research, and publication purposes (and not for any commercial or for-profit or private purpose).

(c) Sponsor shall have the first right to negotiate for a fee or royalty-bearing exclusive license or fee bearing option to any University IP and/or Joint IP, provided that Sponsor pays all costs for the preparation, filing, prosecution and maintenance of any patents on such IP ("Negotiation Right"). Sponsor has 90 days following disclosure of IP by University to exercise its Negotiation Right (the "Negotiation Period"). Sponsor must submit a written notice to University, within the Negotiation Period, in order to exercise their Negotiation Right. If the Negotiation Period expires before University receives Sponsor’s written notice exercising the Negotiation Right or as provided below, Sponsor shall have no further rights to the IP.

(3) Each Party shall require its employees to promptly disclose any IP arising from the Project. Each Party agrees to provide the other Party with a copy of each IP disclosure within 30 days after the disclosure is made, and in addition, will provide the other Party with a written listing of all IP created pursuant to this Agreement within sixty (60) calendar days from the expiration or termination of this Agreement. For all such IP identified, University will provide, via separate written agreement, licenses to University IP and Joint IP according to the provisions of paragraph C(2) above. Each Party will consult with the other Party at least thirty (30) days prior to filing any patent or copyright application for IP and shall promptly notify the other of any patents or copyright registrations issued.

(4) Intellectual property created external to the Project ("Background IP") will be owned by the originating Party. Nothing in this Agreement will be construed as any conferral of rights to any of the Parties regarding such Background IP. Nothing contained herein is to be construed as permission, a recommendation or an inducement to use or practice any product, process, equipment or formulation that may infringe upon any other intellectual property rights without the prior written permission of the intellectual property owner. University does not make any representation or warranty, express or implied, that the use thereof will not infringe any patent or other intellectual property rights.
D. EQUIPMENT: Unless otherwise provided in the Scope of Work or in a writing signed by the Parties, all equipment purchased with funds provided under this Agreement for use in connection with this Agreement shall be the property of University, and shall be dedicated to providing services under this Agreement while this Agreement is in effect.

E. LIABILITY, INSURANCE: 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 the Idaho Tort Claims Act, I.C. §§ 6-901 et seq., as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act. Neither Sponsor nor University warrant or assume liability for the interpretation or use of Project data or results. Each Party represents and warrants that 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. A Party will furnish the other Party a certificate evidencing such insurance upon written request.

F. EXCLUSIVE WARRANTY, DISCLAIMER: University warrants that all deliverables provided under this Agreement will be provided substantially in accordance with the Scope of Work and/or written protocol provided by Sponsor. Project results, deliverables, reports, IP disclosures and IP provided by University are provided strictly “as-is” without any other warranty or guaranty of any kind. All other warranties, express and implied, are hereby expressly disclaimed INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. University shall not be liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether or not University knows or should know of the possibility of such loss or damages).

G. 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 (the “Marks”), or the copyrights 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 Director of Trademark Licensing and Enforcement. In the case of Sponsor, prior written approval is required from an authorized representative of Sponsor.

H. TERMINATION: 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, except in the case of a material breach by University, Sponsor shall pay all costs accrued by University as of the date of termination including non-cancelable obligations for the term of this Agreement, 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, a final report of all costs incurred and all funds received and shall reimburse Sponsor for payments which may have been advanced in excess of total costs incurred with no further obligations to Sponsor.

I. 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 Contract 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 Contract as of the date 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 A or C 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 or copyrights.

J. 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, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory 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 Boise State University, its governing board or the State of Idaho unless signed by University's Director of Sponsored Programs or his/her authorized delegate.

K. 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. Any claim arising under this Agreement shall be filed and tried in the District Court, Ada County, State of Idaho.

L. 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, provided however, such consent shall not be required in the case of a sale or transfer to a third party of all or substantially all of a Party's business. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

M. EXPORT OF TECHNOLOGY: Sponsor acknowledges that there are no restrictions on publication, disclosure, or dissemination of results other than those that have been specifically agreed upon and detailed under this Agreement. Sponsor acknowledges that there are no restrictions on access to or dissemination of information that Sponsor or others will furnish pursuant to this agreement, unless that information has been specifically identified as proprietary information. Sponsor acknowledges that there are no restrictions on the personnel that may be used on this project, unless this has been specifically agreed upon and detailed under this Agreement. Both Parties shall adhere to all applicable laws, regulations and rules relating to the export of goods, services and technology (including technical data), and shall not export or re-export any restricted goods, services or technology to any proscribed country listed in applicable laws, regulations and rules unless properly authorized. Should it be necessary for the Parties to exchange equipment, software or technical data which is known to be export controlled, the Party disclosing such equipment, software or technical data shall give notice to the other Party prior to disclosure or exchange, and obtain any licenses necessary for that disclosure. The Parties agree to identify and label the controlled items as export controlled specifying which authority, Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), governs the restriction and provide the Export Classification Number (ECCN) for all items or technologies restricted under the EAR, or the United States Munitions List (USML) classification for all articles, services or technical data restricted under ITAR.

N. 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 a vice president of University. 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.

O. 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 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 satisfaction of University's obligations under this Agreement.

P. CONFLICT OF INTEREST: Except as set forth herein, Sponsor certifies that no officer, employee, student or agent of University has been employed, retained, or paid a fee, or has otherwise received or will receive during the term of this Agreement any personal compensation or consideration by or from Sponsor or any of Sponsor's directors, officers, employees, or agents in connection with the obtaining, arranging, negotiation or conducting of this Agreement without advance, written notification to University.

Q. 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.