COMPLETING SECTION 17C – AGREEMENT TERMS & CONDITIONS

The OSP Contract Officer (“CO”) will enter the following information into the OSP Proposal & Award Acceptance Workflow (“Proposal Workflow”).

1. Choice of Law

Identify whether the governing law is Idaho law (without regard to principles or rules of conflicts of laws) or the award is silent in this regard. If the award identifies Idaho law or is silent, choose “Yes.” Otherwise, choose “N/A.” Per guidance from the Office of the General Counsel (“OGC”), the CO must always attempt to negotiate Idaho law into the award. If the sponsor is unwilling to accept Idaho law, OGC has counseled that it’s acceptable to be silent in this regard if the “situs” (i.e., place of performance) is likely going to be Idaho. If the situs may not be Idaho or the award states that another jurisdiction’s law will apply, the CO must coordinate with OGC to determine the best path forward. Provide any additional information, such as page numbers to applicable information in the award, in the “Comments” field.

2. Choice of Forum

Identify whether the choice of forum is “Idaho,” “Boise, Idaho,” “Ada County, Idaho” or the award is silent in this regard. If the award identifies Idaho as the choice of forum or the award is silent, choose “Yes.” Otherwise, choose “N/A.” Per guidance from OGC, the CO must always attempt to negotiate the following as the choice of forum: “State District Court, Ada County, State of Idaho.” OGC has counseled that it would prefer Idaho State Courts over the U.S. District Court for the District of Idaho. If the sponsor is unwilling to accept Idaho as the forum, the CO must coordinate with OGC to determine the best path forward. Provide any additional information, such as page numbers to applicable information in the award, in the “Comments” field.
3. **Indemnification by Boise State**

Identify whether any indemnification clauses or representations and/or warranties that act like indemnification clauses comport with Idaho law (e.g., Idaho Constitution, Idaho Tort Claims Act). If so, choose “Yes.” If the award does not contain any such clauses, choose “N/A.” The CO will never choose “N/A” to reflect unacceptable terms in the award because such terms must be negotiated out of the award. Per Idaho Code §§ 59-1015, 59-1016 & 59-1017, it is a misdemeanor (i.e., a crime) for Boise State to enter into an unlimited indemnification clause or representation and/or warranty that acts like an unlimited indemnification clause. A relatively simple approach to avoid this issue is to add the following limitation to all such clauses: “To the extent allowed by Idaho law, including, without limitation, the Idaho Tort Claims Act, Idaho Code §§ 6-901 et seq. as amended from time to time . . . .” If the CO cannot negotiate out of the award the clauses that do not comport with Idaho law, the CO must coordinate with the Principal Investigator (“PI”) and OGC to determine how to proceed. Provide any additional information, such as page numbers to applicable information in the award, in the “Comments” field.

![Indemnification language complies with the Idaho Tort Claims Act?](image)

- Yes
- N/A

Comments:

4. **Insurance**

Identify whether the insurance clauses in the award are acceptable and are limited to the Idaho maximum of $500,000 per occurrence and general aggregate. If so, choose “Yes.” If there aren’t any such clauses in the award, choose “N/A.” The CO must negotiate out of the award all insurance clauses that do not comport with Idaho law. If the CO is initially unsuccessful, the CO must coordinate with the PI, OGC and the Office of Risk Management & Insurance (“RMI”) to determine how to proceed. Provide any additional information, such as page numbers to applicable information in the award, in the “Comments” field.

![Insurance limited to the Idaho maximum of $500,000?](image)

- Yes
- N/A

Comments:

**Note:** Boise State is self-insured and does not maintain insurance that most businesses have. When in doubt, use the “Liability; Insurance” clause in Paragraph I of the “Sponsored Research Agreement” template or the “Service Agreement” template that have been approved by OGC.
5. **Survivability Clauses**

Identify whether survival clauses are reasonable. If so, choose “Yes.” If no survival clauses are in the award, choose “N/A.” *The CO must negotiate out of the award any unacceptable survival clauses (e.g., reporting well after the end of the award).* If the CO cannot negotiate such unacceptable clauses out of the award, the CO must coordinate with OGC and the PI to determine how to proceed. Provide any additional information, such as page numbers to applicable information in the award, in the “Comments” field.

6. **Export Control & Security**

Identify whether there are export control and/or security clauses in the award.

6.1. If the answer is “No,” then the Proposal Workflow will automatically skip *Section 17D*, Export Control and Security.

6.2. If the answer is “Yes,” the CO will need to complete *Section 17D* in accordance with the Frevvo User Guide.