SERVICE AGREEMENT

THIS SERVICE 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, the Sponsor desires certain services 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 “Services”); and

WHEREAS, the performance of the Services is consistent, compatible and beneficial to the academic role and mission of University; 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. SERVICES: University agrees to perform the Services.

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: Sponsor agrees to pay University for the performance of the Services a firm fixed price amount of $[AMOUNT], payable as follows: (1) fifty percent (50%) ($[AMOUNT]) upon execution of the Agreement, (2) forty percent (40%) ($[AMOUNT]) at mid-project ([DATE]); and (3) ten percent (10%) ($[AMOUNT]) upon University’s substantial completion of the Services (collectively, the “Total Agreement Price”).

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 Services as a condition of payment. University will not request additional funds if University’s cost to complete the Services exceeds the Total Agreement Price, and no portion of the Total Agreement Price will be returned to Sponsor upon University’s completion of the Services (even if University’s cost to complete the Services is less than expected).

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

(1) Each Party has certain documents, data, information and/or methodologies that are confidential and proprietary to that Party (collectively, the “Confidential Information”). Confidential Information shall not include, and Recipient (defined below) shall have no obligation to refrain from disclosing or using, information which: (i) is generally available to the public prior to the date of disclosure; (ii) becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; (iii) is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; or (iv) has been independently developed by persons in Recipient’s employ or otherwise who have no contact with the Confidential Information, as proven with written records.

(2) 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; provided, however, the Disclosing Party shall, at the time of disclosure, clearly identify to the Recipient what constitutes the Disclosing Party’s Confidential Information. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of the Services, and for no other purpose (except as may be specifically authorized by the Disclosing Party in writing). Recipient agrees not to: (i) make use of the Confidential Information except for the performance of the Services (or as otherwise authorized by the Disclosing Party in writing); or (ii) disclose the Confidential Information to any third party or parties (including, without limitation, Recipient’s affiliates), unless required by law, without the prior written consent of the Disclosing Party. In the event that Recipient is required by law to disclose the 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.

(3) 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).

(4) Notwithstanding any other provision of this Agreement, Recipient 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.

F. PUBLICATION: University, as an Idaho public institution of higher education, engages only in work that is compatible, consistent and beneficial to its academic role and mission. Therefore, significant results developed during the performance of the Services must be reasonably available for publication. The Parties acknowledge that University shall have the right to publish results. University agrees that any Confidential Information supplied to it by Sponsor during the Term will not be included in any published material without prior approval from Sponsor.

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 Services.

G. INTELLECTUAL PROPERTY: “Intellectual Property,” as used herein, shall mean 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 Services ("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 employees of University ("University IP") shall be owned by University.

(b) IP created solely by one or more employees of Sponsor ("Sponsor IP") shall be owned by 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 in accordance with paragraph G(2) below.

(2) IP shall be licensed as follows:

(a) With the exception of student theses and dissertations, in consideration for sponsoring the Agreement, University shall grant to Sponsor a non-exclusive, non-transferable, perpetual and 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) Sponsor shall grant to University a non-exclusive, perpetual and royalty-free license to use Sponsor IP for any lawful purpose of University, but not for any commercial or for-profit purpose.

(c) Sponsor shall have the first right to negotiate a fee-bearing or royalty-bearing non-exclusive or exclusive license or a fee-bearing option to any University IP and/or Joint IP, provided that Sponsor agrees that in any license, option or similar agreement, Sponsor will be required to pay all costs for the preparation, filing, prosecution and maintenance of any patents or copyrights on such IP ("Negotiation Right"). Sponsor has ninety (90) days following the disclosure of IP 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 or as provided below, Sponsor shall have no further rights to University IP or Joint IP (except as authorized in accordance with paragraph G(2)(a) above).

(3) Each Party shall require its employees to promptly disclose any IP arising from this Agreement. Each Party agrees to provide the other Party with a copy of each IP disclosure within thirty (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) days from the expiration or termination of this Agreement. For all such IP identified, University and Sponsor shall provide, via separate written agreement, licenses to University IP, Sponsor IP and/or Joint IP according to the provisions of paragraph G(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 Party of any patents or copyright registrations issued.
(4) Intellectual property created externally to this Agreement and the performance of the Services ("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.

(5) Nothing contained in this Agreement 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 of any Background IP (if its use is authorized), University IP and/or Joint IP will not infringe any patent or other intellectual property rights.

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 Services during the Term.

I. 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, contractors 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 “Act”). 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 Act, Idaho statutes or any other applicable law. Neither Sponsor nor University warrant or assume liability for the interpretation or use of data or results produced under this Agreement.

Each Party represents and warrants 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 Account. 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 paragraph I.

J. SERVICES; DELIVERABLES; DISCLAIMER: University will make best efforts to ensure that its performance of the Services, including all deliverables provided under this Agreement, are provided substantially in accordance with the Scope of Work. TECHNICAL DATE, RESULTS, DELIVERABLES, REPORTS, IP DISCLOSURES AND IP PROVIDED BY UNIVERSITY ARE PROVIDED STRICTLY “AS IS, WHERE IS” WITHOUT ANY WARRANTY OR GUARANTY OF ANY KIND. ALL WARRANTIES, EXPRESS AND IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED INCLUDING, WITHOUT LIMITATION, 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, WITHOUT LIMITATION, LOST PROFITS (REGARDLESS OF WHETHER OR NOT UNIVERSITY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES).
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 Director of Trademark Licensing and Enforcement. In the case of Sponsor, prior written approval is required from an authorized representative of Sponsor.

L. 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, 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. 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 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 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, IP and/or Background IP.

N. NOTICES: All notices and other correspondence related to this Agreement shall be in writing and shall be effective when delivered by; (i) certified mail with return receipt requested; (ii) hand delivery with signature or delivery receipt provided by a third party courier service (e.g., FedEx, UPS); or (iii) facsimile transmission if verification of receipt is obtained to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

University’s Technical Contact:
[PI NAME, ADDRESS, PHONE, E-MAIL & FAX]

This individual should be contacted regarding technical and programmatic aspects of this Agreement and the performance of the Services. University’s Technical Contact is not authorized to amend or alter this Agreement.
University’s Contract Officer:
Contract Officer
Office of Sponsored Programs
Boise State University
1910 University Drive
Boise, ID 83725-1135
E-mail: sponsoredagreements@boisestate.edu
Telephone: (208) 426-4420
Fax: (208) 426-1048

University’s Contract Officer must be contacted concerning all administrative aspects of this Agreement, including, without limitation, changes, and is authorized to negotiate agreements and amendments on behalf of University.

Sponsor’s Contact:
[SPONSOR NAME, ADDRESS, PHONE, E-MAIL & FAX]

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 the University Executive Director 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 unless noted in Exhibit B, List of Associated Agreements, which exhibit is attached hereto and incorporated herein by this reference. 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 principles or rules of conflicts of laws. Any claim arising under or related to this Agreement shall be filed and tried in the State District Court, Ada County, State of Idaho.

(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; and (ii) provide the other Party with the applicable Export Control Classification Number (“ECCN”) or other classification for such Items. 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 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.

(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) Exhibit A of this Agreement; and (iii) Exhibit B of this Agreement.

[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 — Services

[PLACEHOLDER]
EXHIBIT B
List of Associated Agreements
(copies appended)

[IF NONE, TYPE “INTENTIONALLY LEFT BLANK.”]