

Master Research and Development Agreement

This Master Research and Development Agreement (“Agreement”) is entered into effective as of (“Effective Date”), by and between _____, a _____ located _____ (“Sponsor”) and The Board of Governors of the Colorado State CSU System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, located at Fort Collins, Colorado, 80523-2002 (“CSU”).

WHEREAS, CSU is a comprehensive, land-grant University with experience and resources in fields of mutual interest between CSU and Sponsor; and

WHEREAS Sponsor desires a research relationship with CSU; and

WHEREAS such a relationship is consistent, compatible and beneficial to the role and mission of CSU and the mission and purpose of Sponsor.

Now therefore, in consideration of the above and the mutual promises contained herein, the Parties agree as follows:

1. **Scope of Work.** The University shall furnish the necessary personnel, materials, equipment and facilities, and otherwise perform all things necessary for or incident to the performance of specific projects as agreed upon from time to time by execution of individual Task Orders, substantially in the form attached hereto as Schedule I.

The University agrees to conduct and/or cooperate with Sponsor using best efforts for such research as is agreed upon in each executed Task Order. Each Task Order will include: (1) a description of the Sponsor-funded research activities to be performed by the University independently and/or in cooperation with Sponsor, further described in Exhibit “A” to the Task Order; (2) the project period for the Task Order; and (3) the payment terms. Unless explicitly stated otherwise within the Task Order, each provision of this Agreement shall be incorporated into the subject Task Order by reference. In the event of any conflict between the terms of this Agreement and the Task Order, the terms of this Agreement shall take precedence.

2. **Principal Investigator.** The representative of University who will be responsible for conducting or supervising the research described and ensuring compliance with the terms of each Task Order will be the “Principal Investigator” or “PI” designated in each individual Task Order. The University contacts for programmatic issues to this Agreement shall be:

Program Contact:

Further, the parties agree that all of the PI’s research activities under this Agreement and all research activities in which the PI shall be deemed to have been undertaken as an employee of the University for purposes of applying the provisions of Paragraph 8 regarding IP (as defined therein).

3. **Term.** This Agreement shall become effective on the Effective Date set forth above, and shall remain in effect for a period of five (5) years unless sooner terminated as provided in Paragraph 14. This

Agreement may only be extended by mutual written agreement of the Parties. If any Task Order, initiated prior to the end date of this Agreement, extends beyond the end date of this Agreement, the Task Order(s) will remain in full force and effect including the terms of this Agreement until such Task Orders is completed.

4. **Payment.** Payment terms will be designated as fixed price or cost reimbursable in each Task Order and Task Order amendment which contains changes in funding or the term of the Task Order.

If any Task Order is fixed price, the fixed price not-to-exceed amount is the total value of the Task Order to be paid by Sponsor. Sponsor acknowledges that the University's payment policy is 50% at signature, 40% at the half-term milestone and 10% with the presentation of the final report for fixed price Task Orders.

If any Task Order is cost reimbursable, the total not-to-exceed value of the Task Order set forth in that Task Order shall be the maximum amount reimbursable to the University based on actual University costs, both direct and indirect, using best efforts to complete the Scope of Work. An itemized budget will be provided as Exhibit B to that Task Order. The University reserves the right to re-budget between budget categories consistent with the terms of the Agreement and within the Scope of Work. The University will invoice Sponsor monthly for actual costs incurred.

5. **Reporting Requirements.** The University will provide reports on the progress of the research as outlined in each Task Order.

6. **Confidentiality.** It may be necessary for either party, as the "Disclosing Party", to disclose proprietary information to the other party (the "Recipient") in order to facilitate the performance of the work described in each Task Order. At the time of disclosure, the Disclosing Party must declare in writing which information is proprietary. Proprietary information does not include information that: a) at the time of disclosure or subsequent to that time is generally available to the public; b) is known by the Recipient at the time of disclosure and substantiated in written documents; or, c) is made known to the Recipient by a third party not connected with the Disclosing Party. Except as may be required by law, the Recipient agrees to use its best efforts: a) to maintain the confidentiality of the information; b) not to use the information for any purposes other than contained in the scope of work defined in this Agreement; and, c) not to disclose the information to anyone other than those directly involved with this Agreement.

7. **Publication.**

- a. The University, as a state institution of higher education, engages only in research that is compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of research activities must be reasonably available for publication. The parties acknowledge that the University shall have the right to publish results. The University agrees, however, that during the term of this Agreement and for 6 months thereafter, the Sponsor shall have 45 days to review and comment on any proposed publication of research data, information and results arising from work under this Agreement. The University agrees that any proprietary information supplied to it by the Sponsor during the course of research performed by the University will not be included in any published material without prior approval by the Sponsor, which approval will be wholly within Sponsor's discretion.

- b. The Sponsor will not include the name of Colorado State University in any advertising, sales promotion, or other publicity matter without the prior written approval of the University Vice President for Research.
8. **Intellectual Property.** “Intellectual Property” as used herein shall mean all discoveries, inventions, methodologies, improvements, software, writings and copyrightable works conceived, made, discovered, written, and first reduced to practice in performance of the research under this Agreement (“IP”).
- (a) IP shall be owned as follows:
 - (i) IP created solely by one or more persons who are employees of CSU (“CSU IP”) shall be owned by Colorado State CSU, subject to the rights of its inventors in accordance with the policies of CSU. CSU may, at any time and without notice, assign or convey any or all of its rights in CSU IP (and in JOINT IP under subsection (c) below) to the Colorado State CSU Research Foundation (CSURF), which shall act as CSU’s patent and technology transfer agent. With the exception of student thesis and dissertation copyrights, Sponsor will be provided a non-exclusive, unrestricted, perpetual, royalty-free license to use such CSU IP, for any purpose, but without the right to sublicense, provided that Sponsor shall pay all costs incurred in the course of obtaining patent or other intellectual property protection on behalf of CSU and/or CSURF for such IP and will consult with CSU and/or CSURF on all CSU IP issues and applications.
 - (ii) 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; provided, CSU shall retain a non-exclusive, perpetual, royalty-free license, without the right to sublicense, to use such SPONSOR IP for its own internal academic, research, and publication purposes, subject to the publication provisions of Section 7 above.
 - (iii) IP jointly created by one or more employees of CSU and one or more employees of Sponsor (“JOINT IP”) shall be jointly owned by CSU and Sponsor. Sponsor shall pay all costs incurred in the course of obtaining patent or other intellectual property protection, and will consult CSU with regard to filing of patent and copyright registration for all JOINT IP. Each party is free to enjoy its undivided interests in JOINT IP. Sponsor is not obligated to pay for JOINT IP protection; however, if Sponsor decides not to pay for specific JOINT IP patent or other intellectual property protection pursuant to this Section 8(a)iii, Sponsor shall fully assign in writing all of its right, title and interests in such specific JOINT IP to CSU, and shall have no continuing commercialization rights to such specific JOINT IP whatsoever.
 - (b) Each party shall require its employees to promptly disclose to its respective technology transfer office any IP. 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 or any Task Order whichever comes first. For all such IP identified, CSURF will provide, upon agreement by Sponsor to its payment of patent costs to CSURF, via separate written agreement(s), licenses to CSU IP and JOINT IP according to the provisions of Section 8(a)(i) and 8(a)(iii) 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.

(c) Intellectual property created external to the Project (“EXTERNAL 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 EXTERNAL 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.

(d) CSU does not make any representation or warranty, express or implied, that the use of CSU IP and/or JOINT IP will not infringe any patent or other intellectual property rights.

9. **Equipment.** All equipment purchased with funds provided under this Agreement for use in connection with this Agreement shall be the property of the University, and shall be dedicated first to providing research under this Agreement while this Agreement is in effect.

10. **Use of University Facilities.** The scope of Sponsor’s right, if any, to utilize the University facilities under this Agreement, either in common with or independently of the University, and Sponsor’s obligations in connection therewith, are as set forth on Schedule II which are attached hereto and incorporated herein by this reference.

11. **Liability; Insurance.** Each party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent permitted by law. Liability of the University is at all times herein strictly limited and controlled by the provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.* (the “Act”), as now in effect or hereafter amended, Nothing in this Agreement shall be construed as a waiver of the protection of the Act. 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 with a certificate evidencing such insurance upon written request.

12. **Compliance with Laws; Governing Law; 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. The laws of the State of Colorado shall apply in the interpretation and enforcement of this Agreement (without regard to any conflicts of law rules) and any action arising hereunder shall be filed and tried, if at all, in the District Court, City and County of Denver, State of Colorado.

13. **Assignment.** Neither party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written approval of the other party, except that University may assign any interest in Intellectual Property arising under this Agreement to CSURF without notice or consent of the Sponsor, and CSURF shall be bound by the provisions respecting Intellectual Property herein.

14. **Termination.**

a. 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 or in any Task Order and such failure continues for ten (10) 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 and/or any and all Task Orders as of the date specified in the notice, and may seek such other and further relief as may be provided by law. If this Agreement is terminated for cause, all rights provided the defaulting party pursuant to this agreement and any related Task Orders are also terminated.

- b. Each party shall have the right to terminate this Agreement and/or any accompanying Task Orders, without cause, upon not less than sixty (60) days prior written notice to the other party. If notice is so given, this Agreement shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this Agreement shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.

15. **Late Charges; Expenses.** All amounts payable by Sponsor to University under this Agreement shall be paid to University without any setoff, deduction or counterclaim. Any amounts billed to Sponsor not paid within five (5) days of the due date thereof shall be subject to a late charge of five percent (5%) of the amount billed. In addition, such unpaid amount shall bear interest until paid at the rate of eighteen percent (18%) per annum. In the event any payment from Sponsor by check is returned by the financial institution on which it is drawn for any reason, a service charge of One Hundred Dollars (\$100.00) shall be due and payable in addition to the late charge set forth above. In the event of any default by Sponsor hereunder, Sponsor shall pay to University all attorneys' fees incurred by University in connection with such default or the enforcement of University's rights or remedies arising in connection therewith, whether or not this Agreement is terminated and whether or not University institutes any lawsuit against Sponsor as a result of such default.

16. **Export of Technology.** It is understood that University and Sponsor are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances that such data or commodities will not be exported to certain foreign countries without prior approval of the cognizant government agency. Sponsor and University agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement. Sponsor shall notify University if any data or materials to be supplied to University by Sponsor are subject to export control license requirements or are listed under export control regulations.

17. **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, or negotiating of this Agreement without advance, written notification to the University.

18. **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. Research 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 does not

perform any services under this agreement that may be subject to FDA Regulations, e.g. GMP, cGMP, GLP, GCP work/services. 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). The liability of either party under this Agreement shall not exceed the amount paid or payable to the University under this Agreement.

19. **Changes and Amendments.** This Agreement with all related Task Orders constitutes the entire agreement between the parties. No amendment to this Agreement or any Task Order shall be valid unless it is made in writing and signed by the authorized representatives of both parties.

20. **Notices.** All notices and other correspondence related to this Agreement or to any Task Order shall be in writing and shall be effective when delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, 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:

If to CSU:

If to Sponsor

20. **Legal Authority.** Each party to this Agreement or any Task Order warrants that it possesses the legal authority to enter into the 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 the Agreement and to bind it to its terms. The person(s) executing the Agreement on behalf of a party warrant(s) that such person(s) have full authorization to execute this Agreement. The Agreement shall not be binding upon Colorado State CSU, its governing board or the State of Colorado unless signed by CSU Vice-President for Research or his/her authorized delegate.

21. **Survival.** The respective rights and obligations of University and Sponsor under Paragraphs 6, 7, 8, 12 and 18 shall survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.

The Board of Governors of the Colorado State University System, acting by and through Colorado State University:

Sponsor

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Updated 11-07-12

Schedule I

TASK ORDER NUMBER _____

Master Research and Development Agreement

between

The Board of Governors of the Colorado State University System

acting by and through Colorado State University

And

This Task Order is entered into by and between _____ (hereinafter referred to as the “Sponsor”) and the Board of Governors of the Colorado State University System, acting by and through Colorado State University, (hereinafter referred to as the “University”).

The University and Sponsor entered into a Master Research and Development Agreement effective _____, the terms and conditions of which are incorporated herein by reference. Any conflict between the terms of the Agreement and this Task Order shall be controlled by the Agreement.

Scope of Work.

The University agrees to perform the research activities (“Scope of Services”) as described in Exhibit A of this Task Order number _____ under the direction and supervision of the Principal Investigator _____.

Term.

_____ This project period for this Task Order is effective from _____ through _____.

_____ The project period for this Task Order will commence on _____ and continue until the earlier of when the not-to-exceed amount is expended or University or Sponsor terminate this Task Order. Such termination may be effected by the terminating party providing written notice to the other party at least thirty (30) days prior to the termination date.

Compensation.

The total value of this Task Order is not-to-exceed \$_____. This Task Order is fixed price or cost reimbursable. Payment will be based on conditions contained in Article 4 of the Agreement.

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Reporting Requirements.

The University will provide reports on the progress of the research including a final report as required in the Scope of Services, **Exhibit A.**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written first above.

**THE BOARD OF GOVERNORS OF THE
COLORADO STATE UNIVERSITY
SYSTEM, ACTING BY AND THROUGH
COLORADO STATE UNIVERSITY:**

SPONSOR

By:

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

Updated 11-07-12

EXHIBIT A
SCOPE OF SERVICES
To
TASK ORDER # _____
MASTER RESEARCH AND DEVELOPMENT AGREEMENT

(Enter or attach a complete description of the work to be performed, including any supplies, deliverables or work product to be provided by University. Specify time and manner of performance as required)..

UNIVERSITY PRINCIPAL INVESTIGATOR: _____

SPONSOR PRINCIPAL INVESTIGATOR: _____

TITLE: _____

DETAILED DESCRIPTION:

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**SCHEDULE II
TO
TASK ORDER #_____
MASTER RESEARCH AND DEVELOPMENT AGREEMENT
USE OF UNIVERSITY FACILITIES ADDENDUM**

Sponsor shall have the right, during the term of the Agreement (the “Agreement”), to occupy a portion of property located _____ on the following terms and conditions:

Article 1. **Premises.**

Sponsor shall have the right to utilize certain space located _____ as shown on Exhibit A (the “Premises”) for _____ research and development (the “Purpose”).

Sponsor acknowledges that the Premises is an integral part of the University. Sponsor’s use shall not be exclusive to that of the University and the University will at all times have access to the Premises. Sponsor accepts the Premises in its condition “as is” with all faults, and shall have no right to make any changes or modifications to the Premises.

Article 1. **Sponsor Research.**

a. In conducting its independent research (“Sponsor’s Research”) Sponsor may use the Premises so long as:

- i. One or more Task Orders are in effect under the Master Agreement from time to time; provided however, that not more than 30 days between the expiration of one Task Order and signature of another Task Order shall be permitted;
- ii. University has received evidence that Sponsor has obtained all regulatory approvals necessary or appropriate in the University’s judgment to conduct Sponsor’s Research; provided that this provision shall not be interpreted to require the University to provide the services of any regulatory compliance bodies or committees in connection with Sponsor’s Research; and
- iii. Sponsor shall conduct all Sponsor Research in accordance with all state, federal, University laws rules, and regulations, including but not limited to regulatory compliance. All Sponsor personnel conducting Sponsor Research shall successfully complete all University required training and/or certification.

Article 2. **Rent; Facilities Cost Recovery; Service Charges.**

a. In consideration of this Use of University Facilities agreement, Sponsor promises and agrees to pay to University no later than the fifth (5th) day of each month, monthly rental in the amount of \$_____ for each month during the Term (“Rent”). If Sponsor fails to pay University when due any installment of Rent, Sponsor will pay University on demand a late charge of five percent (5%) thereof. Failure to pay such late charge upon demand shall be an event of default hereunder.

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b. In connection with the use of the _____ for Sponsor's Research, if approved by the University from time to time in its sole discretion, Sponsor shall pay to the University, in addition to any other amounts due under the Agreement, any Task Order, and Rent for the Premises, a facilities cost recovery as set forth on the attached Exhibit B which reflects standard rates for lab fees, equipment usage and associated costs applicable to the facilities as determined by the University from time to time or such other amount as may be agreed to in writing by the parties for such use ("Facilities Cost Recovery").

c. The University may impose one or more use fees based on the use of University resources or services in addition to but in connection with Sponsor's use of the Premises ("Service Charges"). Any proposed Service Charge(s) will be provided to Sponsor in advance of the provision of such resources or services to allow Sponsor to determine whether it would like to proceed with such resource or service use.

Article 3. **Term.**

Sponsor's right to use the Premises shall continue only so long as the Agreement and one or more Task Orders are in effect and such right shall terminate upon the expiration or other termination of the Agreement and completion of all executed Task Orders (the "Term").

Article 4. **Use of Premises.**

Sponsor shall use the Premises only for the Purpose. Sponsor shall use the Premises in a careful, safe, and proper manner and shall pay the University on demand for any damage to the Premises caused by misuse or abuse thereof by Sponsor, its agents, its employees, or its invitees while on the Premises. No use shall be made or permitted to be made of the Premises which are unlawful, constitute an interference with the safe and efficient operation of the Premises or which are inconsistent with the Site Lease. Sponsor shall not commit, or cause to be committed, any public or private nuisance within the Premises, nor, without limiting the generality of the foregoing, shall Sponsor allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose.

Article 5. **Condition of Premises, Maintenance, Alteration.**

By taking possession of the Premises, Sponsor will be deemed to have accepted the Premises in its current condition, strictly on an "AS-IS" basis. Sponsor acknowledges that neither the University nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premise for the conduct of Sponsor's business or for any other purpose. Sponsor shall have no obligation for any modification or improvement of the Premises.

Sponsor shall maintain the Premises in a good, clean, and orderly condition and repair consistent with the nature and state thereof as of the execution of the Agreement. The Premises shall not be altered, repaired or changed without the prior written consent of the University, which consent shall be subject to the University's sole discretion and all requirements and provisions of the Site Lease. Sponsor hereby waives all right to makes repairs at the University's expense. The University shall have the right to enter the Premises at all times, without notice, for the purpose of making necessary inspections and repairs or maintenance.

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Article 6. **Task Orders; Termination.**

Within ninety (90) days after execution of the Agreement, Sponsor will enter into one or more sponsored research agreements with CSU using CSU's standard research agreement form. Such sponsored research agreement(s) shall be for a minimum of \$100,000 including normal Equipment and Instrumentation fees and Cost recovery rates as set forth on Exhibit B. At all times during the term of the Agreement, Sponsor will use its commercially reasonable best efforts to keep in place with CSU one or more sponsored research agreement(s) having a minimum annual value of \$100,000. If Sponsor shall fail to do so and such failure shall continue for sixty (60) days in any twelve (12) month period, CSU shall have the right to terminate the Agreement on thirty (30) day's written notice to Sponsor. Such termination shall not take effect if Sponsor and CSU enter into a sponsored research agreement which satisfies the above requirements before the end of such thirty (30) day period.

Article 7. **Insurance.**

In addition to the provisions of the Agreement regarding insurance, the parties agree that Sponsor shall carry the following insurance in connection with Sponsor's use of the Premises and agree to the following provisions with respect to such insurance.

- a. **Public Liability Insurance.** Comprehensive General Liability including but not limited to Broad Form Property Damage, Premises and Operations, Products and Completed Operations, Personal Injury, and Contractual coverage for this Agreement. This coverage shall provide for a minimum limit of \$1,000,000 each occurrence, Combined Single Limit for bodily injury, personal injury and property damage with an annual aggregate of \$1,000,000. This coverage may be in the form of one or more policies of primary coverage and umbrella coverage. No deductible will be carried under this coverage without the prior written consent of the University. Such coverage shall name the State of Colorado, the Board of Governors of the Colorado State University System, Colorado State University, and their respective board members, officers, employees and authorized volunteers to be named as additional insureds.
- b. **Worker's Compensation and Employers Liability Insurance.** Worker's Compensation insurance as required by Colorado law and Employers' Liability with a minimum limit of \$100,000 covering all employees of Sponsor. The policy shall be endorsed to show that the insurer waives all rights of subrogation against the State of Colorado, Board of Governors of the Colorado State University System, and Colorado State University for injuries arising from the Premises or operations of Sponsor.
- c. **Property Insurance, Loss of Use, and Business Interruption Insurance.** All insurance and related costs, on Sponsor's equipment and other property owned by Sponsor are the responsibility of Sponsor. Sponsor understands and agrees that the University provides no insurance coverage on property belonging to Sponsor, for Sponsor's loss of use of the Premises, or for interruption of Sponsor's business, regardless of cause of loss. Sponsor waives all claims against the University for (i) damage to or destruction of any property belonging to Sponsor; (ii) loss of use of the Premises; and (iii) interruption of Sponsor's business, regardless of the cause of such loss.

Article 8. **Damage or Destruction of Premises.**

If the Premises, or any portion thereof, are damaged or destroyed during the Term of this Agreement by any casualty insurable under standard fire and extended coverage insurance policies, the University shall

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have the option to terminate this Agreement or to repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction.

The Base Rent will be abated proportionately, at a rate and for a period selected by the University, during any period in which, by reason of any damage or destruction not occasioned by the negligence or willful misconduct of Sponsor or Sponsor's employees or invitees, the Premises are rendered unusable for the purposes contemplated by this Agreement.

Article 9. **Indemnification.**

Sponsor hereby agrees to indemnify, defend, and hold the University, its employees and agents, harmless from any and all liability, loss, damages, (including consequential damages), costs, or expenses, including attorneys' fees, on account of injuries to persons or property of the University or of Sponsor or any other person rightfully within the Premises for any purpose whatsoever, where the injuries are caused by the act, omission or negligence of Sponsor, its agents, its employees, or its invitees, or by any person in or upon the Premises with Sponsor's consent, other than the University, its agents, or employees or where such injury occurs as a result of the violation of the provisions of this Agreement by any such person.

Article 10. **Americans with Disabilities Act (ADA).**

Sponsor shall be solely responsible for the design, installation, and maintenance thereunder of any improvements to meet the requirements of the Americans with Disabilities Act (ADA) on the Premises for its clients and employees and recognizes that its services must be provided in a manner consistent with the ADA.

Article 11. **Parking.**

Sponsor and Sponsor's employees shall have the right to use such parking as is reasonably designated by the University upon like payment of normal parking fees as paid by the University's employees and acceptance of the University's published parking rules and regulations. Sponsor agrees that such use shall be at the sole risk of Sponsor, and Sponsor's employees and the University shall not be liable for any injury or damage occasioned by such use.

Article 12. **Hazardous Waste.**

Sponsor shall be responsible for proper (and, where required, licensed) disposal, handling, monitoring and recording of any toxic and/or hazardous waste generated by and/or from any of its uses hereunder of the Premises. Sponsor shall maintain complete records concerning such toxic and/or hazardous waste, which records shall be made available for reasonable review and copying by the University upon written request by the University. Sponsor's use, occupancy and activities on the Premises, unless specifically agreed to in writing by the University, shall not exceed those of a conditionally exempt small quantity generator as defined by EPA Waste Disposal rules and regulations. Sponsor shall not be responsible or liable for any existing environmental hazard(s) on the Premises.

Article 13. **Termination; Surrender and Holding Over.**

Either party will have the right to terminate this Agreement, without cause, upon not less than six (6) months prior written notice.

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Upon termination of this Agreement, either by lapse of time or otherwise, Sponsor shall peaceably surrender the Premises in good condition and repair, except for ordinary wear and tear. Sponsor shall remove all personal property installed by Sponsor upon such termination and shall repair all damage to the Premises caused by such removal. Sponsor will have no right to remain in possession of all or any part of the Premises after the expiration of the Term. If Sponsor remains in possession of all or any part of the Premises after the expiration of the Term, with the express or implied consent of the University: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Agreement for any further Term; and (c) such tenancy may be terminated by the University upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, monthly Rent will be increased to an amount equal to one hundred fifty percent (150%) of the current market rate rent as determined by the University. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Agreement.

Sponsor shall indemnify the University against all liabilities and damages sustained by the University by reason of such retention of possession, including, but not limited to, any reasonable amounts due to or reasonable losses of the University occasioned by any third party to whom the University has agreed to lease the Premises. The provisions of this article shall not constitute a waiver by the University of any re-entry or other rights of the University available under this Agreement or at law.

Article 14. **Default.**

If Sponsor shall fail to pay Rent or any other amounts as required herein, Sponsor shall be in default of the Agreement and the University shall have the rights, as set forth below. In the event that Sponsor shall fail to comply with any term or condition of this Agreement, the University shall provide Sponsor with written notice, as provided by herein, of such default. Sponsor shall have 15 days within which to cure such default (except that such cure period shall be deemed waived if the default is of such nature or extent that (i) it is not reasonably capable of being cured in such period; (ii) persons or property may be placed at risk, or the University's damages are likely to be more severe, if termination and surrender of the Premises is not immediately enforced); and if Sponsor fails to do so, Sponsor shall be in breach of the terms and conditions of this Agreement. In the event of such default, the University shall have the right, at its election:

- a. To give Sponsor written notice of the University's intention to terminate this Agreement immediately or on any later date specified in such notice, in which case Sponsor's right to possession of the Premises will cease and this Agreement will be terminated, except as to Sponsor's liability, as if the expiration of the term fixed in such notice were the end of the Term;
- b. Without further demand or notice, and with or without terminating this Agreement, to reenter and take possession of the Premises, repossess the same, expel Sponsor and those claiming through or under Sponsor, and remove the effects of both or either, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of monthly Rent or other amounts payable under this Agreement or as a result of any preceding breach of covenants or conditions; or
- c. Without further demand or notice, to cure any event of default and to charge Sponsor for the cost of affecting such cure, including without limitation attorneys fees and interest on the amount so advanced, provided that the University will have no obligation to cure any such default of Sponsor.

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Article 15. **Waiver of Performance.**

The failure of the University to insist upon the strict performance of any agreement, term, covenant, or condition hereof or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach of such agreement, term, covenant or condition hereof to be performed or complied with by Sponsor, and no breach hereof shall be waived, altered or modified, except by written instrument executed by the University.

Article 16. **Time of Essence.**

Time is of the essence of this Agreement and of all of its provisions.

Article 17. **Complete Agreement.**

This Agreement, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by the authorized representatives of the parties.

Article 18. **Nondiscrimination.**

The Sponsor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (C.R.S. § 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975.

Article 19. **Late Charges; Expenses.**

All amounts payable by Sponsor to University under this Agreement shall be paid to University without any setoff, deduction or counterclaim. Any amounts billed to Sponsor not paid within five (5) days of the due date thereof shall be subject to a late charge of five percent (5%) of the amount billed. In addition, such unpaid amount shall bear interest until paid at the rate of eighteen percent (18%) per annum. In the event any payment from Sponsor by check is returned by the financial institution on which it is drawn for any reason, a service charge of One Hundred Dollars (\$100.00) shall be due and payable in addition to the late charge set forth above. In the event of any default by Sponsor hereunder, Sponsor shall pay to University all attorneys' fees incurred by University in connection with such default or the enforcement of University's rights or remedies arising in connection therewith, whether or not this Agreement is terminated and whether or not University institutes any lawsuit against Sponsor as a result of such default.

Article 20. **Publicity; Use of Names**

Sponsor will reference its location in the Premises and/or work with the University in any press releases it issues in a manner to be pre-approved by the University. University may require (in its sole discretion) that Sponsor cease citing the Premises or the University at any time. Neither party may use the names or marks of the other without prior permission in each such instance.

Updated 11-07-12

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.

**THE BOARD OF GOVERNORS OF THE
COLORADO STATE UNIVERSITY SYSTEM,
ACTING BY AND THROUGH
COLORADO STATE UNIVERSITY:**

SPONSOR

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____