

BOISE STATE UNIVERSITY TECHNOLOGY AND ENTREPRENEURIAL CENTER

NONRESIDENT SERVICES AGREEMENT

Clients

This Services Agreement (the “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), between the Boise State University Technology and Entrepreneurial Center (the “**TECenter**”), and _____ (the “**Client**”).

RECITALS

- A. The purpose of the TECenter is to foster economic development, within the State of Idaho and the Treasure Valley, by helping support the formation and development of technology driven companies.
- B. The Client has applied for, and has been granted, acceptance as a client in the TECenter on the basis of the suitability of the Client to take advantage of the resources and services of the TECenter in contributing to the fulfillment of the TECenter’s purpose set forth above.
- C. In furtherance of such purpose, the Client wishes to obtain from the TECenter, and the TECenter wishes to provide to the Client, the services specified in this Agreement, on the terms and conditions set forth in this Agreement.
- D. In conjunction with the execution of this Agreement, the Client, as “**Client**” and the TECenter are also entering into a Nondisclosure Agreement (the “**Nondisclosure Agreement**”).

NOW THEREFORE, in consideration of the premises and the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Services of the TECenter

- 1.1. The TECenter agrees to make available to the Client the services set forth in Exhibit A attached hereto. The Client agrees that the TECenter may update Exhibit A from time to time upon by providing the revised Exhibit A to the Client or by posting it in the TECenter.
- 1.2. Any additional charges and costs incurred in connection with the Client's participation in such use of such services shall be at the then current rates charged to other clients of the TECenter, and shall be payable by the Client to the TECenter within 30 days after the Client's receipt of an

invoice for such costs and charges from the TECenter. The initial rates for such services are set forth in Exhibit B.

- 1.3. The Client recognizes and acknowledges that the business venture to be undertaken by the Client under the Lease Agreement and this Service Agreement depends upon the ability of the Client as an independent business person, as well as other factors, such as market and economic conditions beyond the control of the TECenter and the Client. The Client acknowledges that success or failure of the Client's business enterprise will depend upon the business acumen and diligence of the Client. The Client agrees that success or failure of the Client's business will not depend upon the services provided by the TECenter under this Services Agreement nor upon the TECenter's performance under the Lease Agreement, and that the TECenter makes no representations or warranties as to the success of the Client's business.

2. Client Responsibilities

- 2.1 Financial Statements and Employee Reports. The Client shall provide the TECenter with "bookkeeper-prepared" statements if requested by the TECenter. The Client shall also provide the TECenter with reasonably detailed periodic data on the employees and independent contractors of the Client, including the number and names of such employees and contractors, the titles and positions of such persons, and the names and positions of the Client's officers and directors (or equivalent positions).
- 2.2 Periodic Objectives. The Client shall maintain written work plans and deliverables with respect to its growth and development, and shall provide the TECenter with copies of such. The Client shall also provide to the TECenter quarterly and annual reports on the Client's growth and development, in such form and including such data as may reasonably be requested by the TECenter as part of its technology commercialization process.
- 2.3. Regular Meetings. The Client shall hold regular periodic meetings with the TECenter employees, service providers, and/or advisors appointed to monitor the Client's growth and development. The Client acknowledges that as part of the services provided to it by the TECenter under this Agreement, the Client shall receive advice and counsel from such TECenter employees, service providers, advisors and/or other persons as the Director of the TECenter may designate. The Client shall hold such meetings a minimum of at least once every month during the term of this Agreement.

3. Confidentiality

- 3.1. The TECenter (on behalf of its employees, service providers and advisors) agrees that it shall not disclose to any individual, firm, corporation, partnership or other business entity, or use for its own financial gain or benefit, any information relating to the Client's business provided to the TECenter by the Client in connection with the Client's participation in or use of the TECenter's process and services provided under this Agreement and the Leased Premises under the Lease Agreement, whether such information was provided to the TECenter before or during the Term of this Agreement or the Lease Term under the Lease Agreement. To the extent that Client wishes to disclose to TECenter business-sensitive information which Client believes for competitive reasons should not be disclosed to particular TECenter employees, service providers or advisors, the Client shall in advance of such disclosure identify the information and any employee, service provider or advisor who should be screened from such information, and the parties shall mutually agree on procedures to protect such information.
- 3.2. The provisions of Section 3.1 shall not apply to information that:
 - (a) is generally known to the public through no fault of the TECenter;
 - (b) was disclosed to the TECenter by a party having legitimate possession of such information and the right to make such disclosure to the TECenter free of any confidentiality obligation;
 - (c) was in the legitimate possession of the TECenter prior to the disclosure of such information to the TECenter by the Client;
 - (d) was independently developed by the TECenter without the use of confidential information obtained from the Client; or
 - (e) is required to be disclosed by applicable law or legal process, provided that TECenter promptly notifies the Client of such request so that the Client may resist such disclosure or seek an appropriate protective order.
- 3.3. The Client agrees that it shall not disclose to any individual, firm, corporation, partnership or other business entity; or use for its own financial gain or benefit, any information relating to the business of any other client or tenant of the TECenter obtained by the Client in connection with the Client's participation in, or use of the programs and services provided under this Agreement and the Leased Premises under the Lease Agreement, whether such information was obtained by the Client before or during the Term of this Agreement or the Lease Term under the Lease

Agreement

- 3.4. The provisions of Section 3.3 shall not apply to information that:
- (a) is generally known to the public through no fault of the Client; was disclosed to the Client by a party having legitimate possession of such information and the right to make such disclosure to the Client free of any confidentiality obligation;
 - (b) was in the legitimate possession of the Client prior to being disclosed to the Client in connection with the Client's participation in or use of, the programs and services provided under this Agreement and the Leased Premises under the Lease Agreement;
 - (c) was independently developed by the Tenant without the use of such confidential information obtained from the Client; or
 - (d) is required to be disclosed by applicable law or legal process, provided that the Client promptly notifies TECenter of such request so that TECenter may resist such disclosure or seek an appropriate protective order.
- 3.5. The obligations under Article 3 shall continue for a period of five years following any termination of this Agreement.

4. Indemnification

- 4.1 The Client agrees to defend, indemnify and hold harmless the State of Idaho, Boise State University, the TECenter, and their employees, service providers, advisors, representatives and contractors from all costs, expenses (including attorney's fees), liabilities, obligations, damages and claims (including any claims for injury to the person or property of any other tenant of the Building and claims by any governmental authority) arising directly or indirectly from the negligence, misconduct or breach of any provision of this Agreement by Client or any other person participating in or using the TECenter's process or services by the express or implied invitation of the Client.
- 4.2. The TECenter agrees to defend, indemnify and hold harmless the Client, its members, directors, officers, employees, agents, representatives and contractors from all costs, expenses (including attorney's fees), liabilities, obligations, damages and claims (including any claims for injury to the person or property of any other tenant of the Building and claims by any governmental authority) arising, directly or indirectly, from the

negligence, misconduct or breach of any provision of this Agreement by the TECenter or any person acting in the capacity of a TECenter employee, agent, representative or contractor

5. Term and Termination

- 5.1 Unless agreed between the parties in writing that the Client may participate in the process or use the services of the TECenter without being a tenant in the Building, the "Term" of this Agreement shall begin and end on the same dates on which the Lease Term under the Lease Agreement begins and ends.

6. Default of the Client

- 6.1. The following events shall constitute defaults by the Client under this Agreement:
- (i) any amount required to be paid by the Client under this Agreement is not paid at the time and place when and where due;
 - (ii) the Client fails to comply with any other provision of this Agreement;
 - (iii) any event occurs which is a default of the Client under the Lease Agreement or which would become such a default with the giving of notice or the passage of time, or both;
 - (iv) any petition is filed by or against the Client under any federal or state bankruptcy or insolvency law, or the Client shall become insolvent, or the Client shall make a general assignment of its assets for the benefit of creditors, or a receiver is appointed for a substantial part of the Client's assets and the Client shall not cure such event within 30 days after receiving written notice thereof from the TECenter.
- 6.2. Upon the occurrence of an event specified in Section 6.1, the TECenter shall have the option to proceed according to any remedies available at law or in equity.

7. General Provisions

- 7.1. If any provision of this Agreement is illegal, invalid or unenforceable

under present or future law effective during the Term, then it is the intention of the parties that the remainder of this Agreement shall not be affected, and it is also the intention of the parties that, in place of each provision of this Agreement that is illegal, invalid or unenforceable, there be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- 7.2. All rights, powers and privileges conferred under this Agreement on the parties shall be cumulative and not restricted to those given by law.
- 7.3. This Agreement, the Lease Agreement and the Nondisclosure Agreement together contain the entire agreement of the parties with respect to the subject matter of such agreements. No representations, inducements, promises or agreements, oral or otherwise, between the parties shall be of any force or effect if not set forth in such agreements.
- 7.4. No failure of either party to exercise any right of such party under this Agreement, or to insist upon strict compliance by the other party of any obligation under this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of such party's right to demand exact compliance with the provisions of this Agreement.
- 7.5. Time is of the essence of this Agreement.
- 7.6. The relationship of the parties under this Agreement is solely that of independent contractors, and no partnership or joint venture between the TECenter and the Client shall arise as the result of this Agreement.
- 7.7. The headings of each section are added as a matter of convenience only and shall not be considered in the construction of any provision of this Agreement.
- 7.8. Any notice, demand, request or other communication provided for in this Agreement shall be in writing and shall be effective when delivered personally or three business days after being deposited in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address listed below or to such other address as may from time to time be designated by notice given to the other party in accordance with this section.

TECenter:

Attn: Director
5465 East Terra Linda Way
Nampa, Idaho 83687

(Client):

- 7.9. This Agreement shall be governed by and construed in accordance with, the laws of the State of Idaho, with regard to the principles thereof concerning the choice of law.
- 7.10. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument

IN WITNESS WHEREOF, the parties hereto have caused this Services Agreement to be executed as of the day and year first written above.

TECHNOLOGY AND ENTREPRENEUREAL CENTER:

By: _____
Name: **John Glerum**
Title: **TECenter Director**

CLIENT (NONRESIDENT):

Monthly Fee \$ _____

By: _____

Name: _____

Title: _____

Exhibit A

Effective December 1, 2005

TECenter Services

A. Development Services

The implied cost of Menu Development Services below are tallied as they are utilized and annually should not exceed the annual rent or fees of the TECenter Client.

Additional charges from outside Service Providers will be strictly between the Client and the Outside Service provider.

Basic Development Services (Included in Rent or Nonresident Payments)

- Semi-Annual Assessment Check-ups and Reports
- Quarterly Work Plans
- Monthly/Quarterly Financial Reviews
- Ongoing Service Provider Facilitation

Menu Development Services (Costs as listed)

General Services

- Negotiation Training (\$200)
- SBIR Consultation (\$200)
- University Faculty Consulting (\$50 per hour)
- Student Team Projects and Facilitation (\$250 per team)
- Service Provider Facilitation (\$50 per hour)
- Management Coaching, Expansion and Enhancement (\$50 per hour)
- Presentation Training (\$200)

- All other one-on-one services (\$50 per hour)

Specific Services (Commercialization Stages and Steps)

Assessment Stage

- Market Needs Assessment (\$200) Step 2
- Venture Quick Test (\$100) Step 3
- Preliminary Cost and Revenue Estimates (\$200) Step 3

Feasibility Stage

- Competitive Matrix and Analysis (\$200) Step 5
- Market Research Guides (\$100) Step 5
- Market Study - (\$300) Step 5
- Concept Development (\$200) Step 6
- Fundamental Financial Assumptions and Pro Formas (\$200) Step 6

Development Stage

- Project Management Planning (\$200) Step 6
- Operations Planning (\$200) Step 7
- Strategic Marketing Plans (\$300) Step 8
- Strategic Business Plan Development (\$400) Step 9

Introduction Stage

- Supply Chain Planning (\$300) Step 10
- Strategic Selling Plans (\$300) Step 11
- Business Plan Risk Analysis (\$100) Step 12
- Financial Venture Valuation (\$100) Step 9
- Capital Planning, Development and Showcasing (\$200) Step 12
- Cash Flow Planning and Monitoring – (\$200) Step 12

Growth Stage

- Quality Improvement Processes (\$200) Step 13
- Distribution Planning and Control (\$200) Step 13
- Customer Satisfaction Surveys and Improvement Plans (\$200)
Step 14
- Product Improvement (\$200) Step 14
- Geographic Expansion Planning (\$300) Step 15
- Product Diversification Planning (\$300) Step 15
- Enterprise Bench-marking (\$200) Step 15

Optimization Stage – Post-Incubation

B. Facilities Common Services*

The common services included in the resident client's rent are:

- Heating, Ventilation and Cooling
- 24/7 Secured Building Access
- 24/7 Interior Client Security
- Free on-site parking
- Lounge Facilities (includes use of , vending machines, two microwaves, toaster oven and refrigerator/freezer)
- Basic Telecom Package: digital data lines and free internet access and broadband.
- Mail Address with Private Mailbox
- Availability of surplus furniture (desks, credenzas, chairs) and computer equipment on a limited basis
- Work Room Access - Copier, Fax (analog line), Scanner and Laser Printer
- Priority use of Presentation and Conference Rooms
- Priority use of audio/visual equipment
- Wireless High Speed Internet Access
- Invitation to support luncheons
- Software discounts as available
- Access to Reference Center Materials
- Access to National Business Incubation Association (NBIA) resources

* Resident Tenants, Nonresident Clients and Pre-Incubation Clients have the same common services.

C. Client Responsibilities

- Utilities (prorated based on actual space when invoiced)
- Voice Lines and Phones
- Work Room Usage Charges – Copier, Fax, Printer
- Server Equipment and Connection Requirements
- Subsequent Security Devices (Keys and Passes)
- Renters Insurance (See Lease Agreement)

Exhibit B

Effective November 15, 2005

Current Monthly Rent Schedule and Nonresident and Pre-Incubation Service Fees

- Resident Clients Rent: Office space \$.75 to \$1.50 per square foot per month depending on size and location of the office; Industrial space \$.75 to \$2.00 per square foot per month depending on size and location*
- Nonresident Clients: \$150-\$500 month Service Fee. See Agreement.
- Pre-Incubation Clients: \$150 month Service Fee. See Agreement.

*Resident Client rent increases will occur after the company has been in the TECenter for one and for two years. These annual increases will be 10% and 20% of the initial rent per square foot per month respectively. Rate increases are necessary to gradually prepare the client company for prevailing market rates.

Exhibit C

Effective August 1, 2009

KEY PROCEDURES:

- All Resident Clients will be or have been issued keys and fobs to enter the building and their offices.
- Nonresident Clients are issued fobs to the building common areas only.
- **PLEASE DO NOT LEND YOUR KEYS or FOBS TO ANYONE. THIS IS FOR SECURITY REASONS. CLIENTS ARE NOT AUTHORIZED TO MAKE COPIES OF ANY BUILDING KEYS. THE TECENTER KEEPS A LOG ON ALL KEYS AND FOBS ISSUED.**
- All TECenter companies are issued one mailbox key.

As of August 2009, there is a \$15 fee to reissue any lost office keys or fobs. Mailbox replacement keys are \$10.