GRATIS SERVICE AGREEMENT

ORGANIZATIONAL RECIPIENT

This Gratis Service Agreement (“Agreement”) is made this _______ day of ________, 20__ by and between Boise State University on behalf of its College of Engineering (hereafter referred to as “University”) and in partnership with the University’s Service Learning Center (“SLC”) and ______________________ (hereafter referred to as “Recipient”), a Non-Profit Organization.

WHEREAS University has expertise in the field of Engineering and its faculty and students desire to provide the Engineering Services set forth in Exhibit A (attached hereto and incorporated by reference herein) to Recipient, without charge, for the purpose of solving engineering-related problems arising from Recipient’s operations as a part of the University’s public service mission; and

WHEREAS Recipient desires to obtain the services set forth in Exhibit A for the benefit of its operations:

NOW THEREFORE, Recipient and University, with the intent to be legally bound hereby, agree to all of the following terms and conditions:

1. Indemnification and Hold Harmless: To the extent permitted by Idaho law including Article VIII, Sections 1, 3 and 4 of the Idaho Constitution and Idaho statutes, Recipient agrees to defend, indemnify and hold University, the State of Idaho, the Idaho State Board of Education, and their respective officers, agents, and employees harmless from and against any and all claims, demands, judgments, lawsuits, awards and fines (hereinafter referred to as “Claims”) resulting from Recipient’s own negligent or otherwise wrongful acts or omissions related to performance of any activity or service in connection with this Agreement; provided, however, that Recipient shall not be liable for more than the pro rata share of the total damages awarded in favor of a claimant which is attributable to the negligent or otherwise wrongful acts or omissions of Recipient or its employees.

The provisions of this Section 1 shall survive the completion or earlier termination of this Agreement. In the event that a Claim is filed against the University for which University, its officers, agents, or employees are entitled to indemnification under this paragraph, University and its personnel shall co-operate with Recipient in the investigation and defense of such Claim, and shall provide written notice of the Claim to Recipient within thirty (30) calendar days of University knowledge of the Claim. Claims reported by University after the thirty (30) day period will not be covered by the indemnification to the extent late Claim reporting actually impaired Recipient’s defense of the Claim. All legal counsel provided by Recipient to represent University under the terms of this indemnity and hold harmless are subject to University approval, such approval not to be unreasonably withheld. In no event will the indemnification provisions herein alter or waive protections afforded and/or defenses that may be available to public entity recipients under the Idaho Tort Claims Act, including any defenses, burdens of proof, immunities, and limitations on damages to which Recipient would be entitled if claims were asserted against Recipient.

2. Waiver of University Liability: To the extent permitted by Idaho law including Article VIII, Sections 1, 3 and 4 of the Idaho Constitution and Idaho statutes, Recipient hereby waives, releases, and forever discharges any and all Claims against University, the State of Idaho, the Idaho State Board of Education and their respective officers, agents, volunteers, contractors, subcontractors and employees which may arise out of the originality, design, manufacture, or use of any of the products, processes, technologies, or intellectual property generated as a result of the services provided, unless such Claims arise out of the willful misconduct or gross negligence of the University, its faculty, students, or agents. This waiver shall apply to any and all Claims that occurred in the past or will occur in the future whether or not Recipient knew of such claims. In no event will the indemnification provisions herein alter or waive protections afforded and/or defenses that may be available to public entity recipients under the Idaho Tort Claims Act, including any
defenses, burdens of proof, immunities, and limitations on damages to which Recipient would be entitled if claims were asserted against Recipient.

3. **Insurance:** Throughout the term of this Agreement and any extension thereof, Recipient shall maintain, at its sole cost and expense, a policy or policies of insurance or a comparable program of self-insurance with insurance coverage and policy limits of not less than $1 million per occupant or $2 million aggregate and worker’s compensation insurance as required by statute. In lieu of the foregoing, for public entities subject to the provisions of the Idaho Tort Claims Act, such entities shall maintain general liability insurance with limits not less than $500,000 as is required by the Idaho Tort Claims Act with combined property damage and bodily injury liability, including blanket contractual and personal injury liability, automobile liability including property damage and bodily injury with combined limits of not less than $500,000 and worker’s compensation insurance as required by statute. Recipient agrees to provide evidence of such coverage to University at University’s request. Recipient agrees that, when appropriate to manage the operational risk associated with the services to be performed by University, the insurance coverage and limits specified may be modified or waived by University’s Office of Risk Management and Insurance, whose decision on such matters shall be final.

4. **Consequential Damages:** Recipient agrees that in no event shall University be liable for any incidental or consequential damages resulting from University’s performance or failure to perform any service in connection with this Agreement.

5. **Intellectual Property Rights:** With the exception of students who are University employees, and whose scope of employment includes the activities contemplated under this agreement, the University does NOT take an interest in and will not actively seek to protect student intellectual property. Thus, intellectual property that arises from the activities or services provided hereunder belong to the non-employee student inventor.

6. **Confidentiality of Information:** Services provided under this Agreement are provided by students at Boise State University as part of their educational experience. Students are expected to work closely with classmates and faculty to provide services; thus Recipient should not expect and University will not warrant that information provided to University will remain confidential with student participant.

7. **Choice of Law:** The Parties hereto agree that this Agreement shall be governed by the laws of the State of Idaho. Any action to enforce the provisions of this Agreement shall be brought in state district court in Ada County, Boise, Idaho.

8. **University as Government Entity:** University is a public institution of higher education within the State of Idaho. Nothing herein shall be deemed to constitute a waiver by University of any privilege, protection, or immunity otherwise afforded it under the Idaho Constitution, the Idaho Tort Claims Act, or any other applicable law.

**ACCEPTED BY:**

Boise State University:

By: ______________________________ Date: ________________________

Signature, (title)

(Print or Type Name)

Recipient Organization:

By: ______________________________ Date: ________________________

Signature, (title)

(Print or Type Name)