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**UNIVERSITY OF OREGON**

**INNOVATION PARTNERSHIP SERVICES**

Innovation Partnership Services (“IPS”) acts on behalf of the University of Oregon (“UO”) and is responsible for the management of all UO-owned intellectual property (the “IP”), including licensing and formation of new business ventures based on UO-owned IP. IPS is charged with these responsibilities under UO Policy II.07.02

“Inventions, License Agreements, Educational & Professional Materials Development, Patents & Copyrights,” effective September 27, 2017: https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-7-innovation-tech-transfer-economic-development/inventions (the “UO IP Policy”).

**COMPANY FORMATION GUIDELINES AND REQUIREMENTS**

VFormation, operating within IPS, was created to assist faculty and staff members at the UO (“Founders”) in forming jointly owned new companies that will attempt to attract entrepreneurs to act as business managers, seek funds to incubate technologies and build business operations around UO intellectual property. Working with the IPS VFormation team to form a company is a voluntary exercise and is not required by UO policy as part of an entrepreneurial endeavor. IPS also manages UO’s Free Flight program, where UO faculty and staff conduct their entrepreneurial activities independently within the framework of UO’s conflict of interest, conflict of commitment and IP policies. This guidelines document is intended to provide Founders with an understanding of the mutual requirements, responsibilities and expectations for creating companies through IPS VFormation at UO.

**Company Formation and Governance**

In order to establish a legal entity, IPS will register a new company (“Company”) with state and federal agencies, as appropriate. The Company will be formed as a Limited Liability Company (“LLC”) with the Founder(s) and UO as founding members. The initial membership interests will be divided between the Founder(s) (51%), and UO (49%). The Founder(s) will decide how the collective 51% ownership will be divided. IPS is not involved in the decision, but the individuals involved, and the associated amounts of equity they hold in the Company need to be reflected in the UO Innovators’ Royalty Sharing Agreement associated with the licensing of the underlying technology. IPS may request Founders and non-Founder innovators to come to an equitable agreement in the Royalty Sharing Agreement to reflect overall relative contributions.

Upon completion of the state registration, IPS will also complete all federal registrations including the Employer Identification Number (“EIN”) which is the tax identifier for the government. The Company’s initial address of record will be the offices of IPS, with a representative of IPS acting as the initial point of contact for all Company matters.

At the time of Company formation, UO and Founder(s) will enter into an LLC Agreement in a form substantially similar to the template agreement which the IPS VFormation team will provide separately. The LLC Agreement sets forth the various rights, obligations and responsibilities of the parties in greater detail, and it establishes the initial governance and oversight procedures for the Company.

Founders’ Company formation and governance efforts will be conducted as extramural activities under the university’s “one-day-in-seven” policy. Additionally, Founders will not use UO facilities and resources in furtherance of their company formation and governance activities, and all significant Company meetings will occur at the offices of IPS or at another suitable location outside of UO. In light of their receipt of significant separate membership interests in Company pursuant to this Agreement, Founders will normally be expected to waive any rights to a share of any equity consideration that they might otherwise have held under UO IP Policy, as part of the Royalty Sharing Agreement or any subsequent grant of rights by UO to Company in which UO is entitled or allocates equity to any other UO staff or students that contributed to the underlying technology/work. For clarity, the above waiver does not apply to non-equity based consideration paid to UO pursuant to the terms of any license agreement between UO and the Company for the rights to commercialize the Founder’s technologies. Founders shall continue to be eligible for distributions related to such non-equity based consideration as set forth in the UO IP Policy.

**Grant Application Submission**

As one of the funding mechanisms potentially available to the newly formed entities, the Company may seek funding from the SBIR/STTR grant programs (http://www.sbir.gov/), and/or related commercialization grant programs, administered by the Federal Government of the United States (“SBIR”) or from state of Oregon sponsored commercialization programs. IPS will assist Founders in the preparation and submission of applications for SBIR funding and other state of Oregon commercialization programs, in order to commercialize UO-owned technologies being developed at UO by its Founders. Under these circumstances, the Founders also need to assist in the preparation and submission of an SBIR or state of Oregon sponsored program, as described below. When deemed necessary and to the extent of budgetary limits, IPS may employ consulting services to assist the Founders in preparing and editing the textual content of the grant proposals.

The Founders will bear primary responsibility for preparing the technical and scientific content of the SBIR or state of Oregon commercialization proposal, including the specific aims and associated budgets, in collaboration with IPS and any appointed consulting services, in accordance with project and grant submission deadlines. Founders will also be solely responsible for ensuring that the appropriate UO agencies (e.g. Departmental Administrators, Sponsored Projects Services, Research Compliance Services-financial conflict of interest in research) have been properly notified of the intended SBIR or state of Oregon submission and the Founders’ ownership interests in the Company, as appropriate. Founders further agree to use their best efforts to comply with any instructions or reporting requirements provided by the agencies listed in the preceding sentence, including, but not limited to, those pertaining to grant submissions and awards at UO.

As part of the grant application process, an individual will be identified to be the Company representative/grant contact (“the Company Representative”). The Company Representative will manage the business and grant interactions with the SBIR granting agency/state of Oregon agency once the SBIR grant/state of Oregon grant, is awarded. At the time of grant award, the Company Representative will have the Company as his/her primary place of employment as defined by the SBIR/STTR grant program, or as required by the state of Oregon commercialization program, unless the specific agency program does not require Company employment in its Phase I program. At the time of grant submission, the Company Representative may be a current employee of UO, provided he/she recognizes that he/she will also become an employee of the Company upon funding of the SBIR grant application at or exceeding the minimum threshold required by the cognizant granting agency.

**Licensing**

When the Company intends to develop and practice IP owned by UO, the Company will need a license from UO. UO and Company will enter into a research license for the applicable IP with an option to negotiate a commercial license based on reaching certain milestones. As soon as Company is formed, the IPS VFormation team will seek an entrepreneur, who would be matched to the company pending approval by the Company (“Manager”). The Manager will be responsible for running the business and converting the IP option into a commercial license from UO for any UO-owned IP needed by Company. At the time a commercial license agreement is executed between UO and Company, Company Founders will update UO on their proposed fiduciary or decision-making role(s) at the Company going forward. UO will evaluate the proposed role(s) under its then current conflict of commitment and conflict of interest policies. Generally, it is UO’s expectation that Founders will step down from a Company officer position as soon as is feasible and in no event longer than 2 years from Company formation, unless a Founder resigns or reduces their position at UO to reflect the time commitments necessary to operate Company successfully.

Upon approval of a SBIR grant application or state of Oregon commercialization application, the Company Representative may negotiate a license to commercialize the technology involved in the Company’s research. All parties understand that prior to the granting of an IP license, the structure of the Company must conform to UO’s established policies, including the UO IP Policy and stated Conflict of Interest policies (II.06.01: Research: Financial Conflict of Interest in, at <https://policies.uoregon.edu/vol-2-academics-instruction-research/ch-6-research-general/research-financial-conflict-interest> and II.02.02 Conflict of Interest, Conflict of Commitment, and Outside Activities **at https://policies.uoregon.edu/vol-1-governance/ch-2-legal-affairs/conflict-interest-conflict-commitment-and-outside-activities**. Under the VFormation program, a commercial license to UO-owned IP cannot be granted to a Company that is majority-owned by the Founders. Dilution due to, but not limited to, the hiring of executives, the creation of employee option pools, or infusions of capital by third parties will reduce the equity positions of the Founders and UO on a pro rata basis and will assure that the Founders do not own a majority of the Company at the time of commercial licensing. The structure of the Company must at all times conform to stated UO IP policies.

The SBIR program requires that upon award the Company must operate independently and not occupy space on the university campus unless Company has a facility use agreement with UO under standard terms. IPS will cooperate with the Company Representative and/or Manager to find an appropriate location for the Company’s operations. The Company Representative and/or Manager will be required to create budgets and manage the Company’s resources in order to accomplish the objectives listed in the SBIR or state of Oregon grant proposal and to ensure compliance with all SBIR regulations and reporting requirements.

**Termination**

In the event that the Company is unsuccessful in securing funding, and a mutual decision is made not to pursue alternative means of support for the Company, IPS will take the appropriate steps to dissolve the Company with the Founders’ full support and cooperation. In the event that a Founder and/or Company Representative and/or Manager, as the case may be, does not either (a) strictly abide by the aforementioned company formation guidelines and requirements, or (b) is determined to have violated any of the established policies of UO and/or SBIR program authorities, UO has the unilateral right under the incorporation agreement to dissolve the Company and any license or option for UO owned intellectual property previously granted to the Company shall be null and void.

**Questions/Additional Information**

If you have any questions or would like to discuss this document in more detail, please do not hesitate to contact IPS at 541-346-2028 or at techtran@uoregon.edu.