

**MEMORANDUM**

**To:** Executive Committee of the Board of Trustees

**From:** Steven R. Schultz, General Counsel  
Matt D. Folk, Vice President for University Advancement and Alumni Engagement

**Cc:** Mitchell E. Daniels, Jr., President  
Christopher A. Ruhl, Treasurer and Chief Financial Officer

**Re:** Purdue for Life and Purdue Alumni Association Reorganization

**Date:** March 2, 2021

**Purpose.** This memo requests approval of the Executive Committee, acting for the full Board, of the formal completion of the Purdue for Life and Purdue Alumni Association reorganization.

**Discussion.** As you know, this initiative has been in the planning and discussion stages for the better part of two years. We have now reached agreement on structure and terms with the leadership of the Purdue Alumni Association (“PAA”), have made the necessary arrangements with Purdue Research Foundation (“PRF”) to facilitate the transaction, and are scheduled for an official closing as of close of business on March 31, 2021. The basic agreements governing the reorganization include the following:

- The ***Joint Plan and Reorganization Agreement*** is the primary agreement governing the reorganization. Under it:
  - PAA will transfer operating assets to Purdue for Life Foundation, LLC (“P4L”), an Indiana nonprofit limited liability company having automatic 501(c)(3) status by virtue of being a subsidiary of PRF—its sole member.
  - P4L may be spun out as a standalone 501(c)(3) in the future under certain conditions.
  - PAA personnel will be transferred to PRF, but immediately thereafter will be functionally assigned to work—along with University Development Office (“UDO”) personnel—exclusively at P4L. (PRF will remain the employer of record of the former PAA and UDO personnel solely for payroll and benefits purposes.)
  - PAA retains ownership of its endowment assets and otherwise maintains its corporate existence to serve its statutory trustee-nomination purpose every few years. Under certain conditions, PAA has the right in the future to unwind from P4L and resume alumni engagement functions.
- The ***Outside Organization Participation Agreement*** between PRF and PAA governs PRF’s continued provision of investment management services with respect to the investment account in which the PAA endowment assets are held and which is managed by PRF as part of the unitized endowment pool that also contains the University and PRF endowments.
- The ***Services and Meeting Space Agreement*** between P4L and PAA governs P4L’s provision of services and meeting space to PAA in support of PAA’s core governance functions and alumni engagement activities, which going forward will be exclusively within P4L’s purview. This

agreement contains a framework for performance metrics that will be used from time to time to evaluate P4L's success in advancing the alumni engagement activities.

- The ***Memorandum of Understanding and Mutual License Agreement*** between the University and PAA primarily governs PAA's ongoing ability to use the Purdue name and certain "derivative marks" owned by Purdue, which include the traditional Purdue "Block P" with the words "Alumni" or "Purdue Alumni." It also recognizes the University's ongoing ability to use these derivative marks.
- The ***License Agreement*** between PAA and P4L governs the latter's ability to use the PAA marks in connection with alumni engagement activities.
- The ***Operating Agreement*** for P4L defines its governance structure and serves as the functional equivalent of "bylaws." Notably, P4L's Board of Managers consists of (a) the President of Purdue University, (b) three managers appointed by the University's Board of Trustees, at least one of whom must be a Purdue trustee selection through the PAA election process, and (c) one manager appointed by PAA's executive committee.

Approval of the reorganization by the PAA Board of Directors is expected next week. In addition to the above-referenced documents related to the P4L-PAA reorganization, the University, PRF and P4L will simultaneously be entering into a set of agreements that govern various aspects of their relationship going forward, as adjusted for certain changes prompted by the reorganization. These include:

- An ***Amended and Restated Services Agreement*** between the University and PRF, which amends and restates the last such agreement that was entered into at the time of the 2014 reorganization when UDO and the Office of Investments moved to PRF;
- A ***Contribution and Services Agreement*** between PRF and P4L, which governs the transfer by PRF of the UDO assets to P4L and the functional assignment of UDO personnel to work exclusively at P4L; and
- A new ***Services Agreement*** between P4L and the University, which governs P4L's provision of fundraising, development and donor relations services to the University, now that those will no longer be provided by PRF under the Amended and Restated Services Agreement referenced in the first bullet above.

Each of these agreements, in substantially final form, has been uploaded to the Board portal in two separate folders, one for the core P4L/PAA reorganization and one for the internal services agreements.

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**Requested Action.** At your meeting, we recommend that the Executive Committee adopt a motion to:

- (1) approve the P4L/PAA reorganization, and
- (2) authorize the appropriate officers of the University to execute the following agreements to which the University is a party, with such further changes as the officers may approve in their discretion:
  - a. The Joint Plan and Reorganization Agreement among the parties;
  - b. The Memorandum of Understanding and Mutual License Agreement with PAA;
  - c. The Amended and Restated Services Agreement with PRF; and
  - d. The new Services Agreement between P4L and the University regarding UDO services.

## JOINT PLAN AND REORGANIZATION AGREEMENT

This Joint Plan and Reorganization Agreement (“Agreement”) is entered into and effective at the close of business on March 31, 2021 (the “Effective Time”), by and among the Purdue Alumni Association, Inc., an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PAA”), Purdue Research Foundation, an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PRF”), Purdue for Life Foundation, LLC, an Indiana nonprofit limited liability company (“P4L”), and Purdue University, the State of Indiana’s land grant university (“Purdue” or the “University”).

### RECITALS

**WHEREAS**, PAA was created over 140 years ago by Purdue alumni, and formally incorporated in 1928, with the mission to connect alumni to the University and to each other; and

**WHEREAS**, PAA is an exempt organization under Section 501(c)(3) (“Section 501(c)(3)”) of the Internal Revenue Code of 1986, as amended (the “Code”) and Code Section 509(a)(3), and, in accordance with Indiana law and through a process defined in PAA By-Laws, selects three members of the Purdue University Board of Trustees (the “Board of Trustees”); and

**WHEREAS**, PAA performs a variety of activities in support of alumni engagement and benefits to PAA membership to (a) connect alumni to Purdue programs, services and events, (b) connect alumni to each other through clubs, networks and events around the world, (c) provide opportunities for professional development through skills training, online courses and degree programs, (d) create opportunities for career development coaching, resumé review and job-seeking skills training, and (e) create opportunities for personal development by sharing research focused on all aspects of wellness (cumulatively, the foregoing are referred to as “Alumni Engagement”); and

**WHEREAS**, PAA has accumulated an investment account (the “Investment Account”) through contributions, operational income, investment and other earnings, which is maintained in support of its mission; and

**WHEREAS**, PAA presently employs a staff of personnel in support of PAA’s operations, including Alumni Engagement functions; and

**WHEREAS**, PAA holds certain other non-investment assets, and has entered into certain contracts, including a real estate lease, in support of PAA’s operations; and

**WHEREAS**, PAA is governed by a Board of Directors (the “PAA Board”), and the PAA Board has delegated the power to act to an Executive Committee (the “PAA Executive Committee”), subject to ratification of its actions by the PAA Board; and

**WHEREAS**, PRF was created in 1930 as a separately incorporated, nonprofit entity, the primary purposes of which are to promote the educational purposes of the University; to award scholarships, grants, or other financial assistance to students and faculty; to seek, acquire, and hold gifts and endowments for the needs of the University; to acquire property or facilities for the future use or benefit of the University; and to support and assist, in any other manner or by any other means whatsoever, the Board of Trustees in the conduct of the affairs of the University and the accomplishment of its educational purposes; and

**WHEREAS**, PRF is an exempt organization under Section 501(c)(3) that, among other functions, conducts the direct development and investment functions of the University for and on its behalf; and

**WHEREAS**, PRF has formed P4L as its wholly-owned subsidiary, which, for purposes of the Code, will be considered a disregarded entity for tax purposes that shares PRF's tax-exempt Section 501(c)(3) status; and

**WHEREAS**, the University's three alumni facing organizations, PAA, the University Development Office ("UDO") and the John Purdue Club ("JPC"), have historically operated independently and with varying degrees of coordination; and

**WHEREAS**, while JPC and UDO are now under one organizational structure (PRF) and work together to solicit private gifts and steward donors to the University, PAA operates independently under a self-sustaining, self-governing membership model to serve its membership and engage with all alumni with program revenue flowing to PAA to support alumni engagement activities; and

**WHEREAS**, all three organizations have engagement and/or fundraising goals that cause them to act vertically within their own mission, resulting in an organizational structure that leads to poorly coordinated outreach to alumni and friends; and

**WHEREAS**, for many months, the Board of Trustees, the Purdue for Life Committee, and PAA have been discussing and outlining a collaborative approach that would (i) create strategic coordination of all outward-facing engagement, alumni member services, fundraising and stewardship efforts, (ii) further develop the University's brand, and (iii) present a unified "One Purdue" banner—all through a collaborative reorganization involving mutual board representation, the provision of Alumni Engagement services by P4L under contract with PAA, the licensing of certain intellectual property, and other transactions; and

**WHEREAS**, PRF has transferred or is transferring at the Effective Time the direct development functions of the University (including the development function employees) to P4L; and

**WHEREAS**, for the purpose of (a) reducing redundancy and creating flexibility in the cultivation and management of donor and alumni relationships and records, (b) increasing efficiency by more effectively allocating employee efforts, and (c) more closely unifying and aligning all University development and Alumni Engagement functions and membership services functions, PAA, PRF, Purdue and P4L entered into a Letter of Intent, dated as of July 27, 2020, in order to outline the process of consolidating the University development, Alumni Engagement

functions and PAA member services in P4L and to assist the collaboration process until finalization of such consolidation; and

**WHEREAS**, such Letter of Intent, which is non-binding, contemplated execution of binding definitive agreements, including this Agreement, that would, upon becoming effective, supersede and replace the Letter of Intent and thereafter govern the reorganization process, with July 1, 2021 targeted as the latest date for completion of the reorganization.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## **AGREEMENT**

1. Reorganization and Collaboration. The parties hereby agree to undertake and give effect to the plan of reorganization and collaboration as provided in this Agreement. The transfers of assets and personnel described herein, the licensing of certain marks of PAA to P4L per the “PAA License Agreement,” and the services and activities in support of PAA’s Alumni Engagement Mission and related funding to be undertaken under the “Services and Meeting Space Agreement” and the “Outside Organization Participation Agreement” (as such terms are defined below) shall all be effective and/or commence upon the Effective Time.
2. Transfer of Personnel.
  - (a) Transfer of Personnel. To enable P4L to continue PAA’s Alumni Engagement mission on behalf of PAA, as reflected in the mission and vision of P4L (the “Mission and Vision,” attached as Exhibit A), effective at the Effective Time, all salaried and hourly employees (approximately 30-35 employees) of PAA shall be transferred to P4L (the “Transferred Employees”) on substantially the same salary and/or wage levels, and such personnel will receive the corresponding P4L benefits (which are comparable to PRF benefits), although P4L shall not be prevented from reassigning or retitling personnel as it deems necessary in its sole discretion. It is understood and acknowledged that the “transfer to P4L” of the Transferred Employees contemplated by this Section 2 may be accomplished by a process whereby PRF: (i) hires all of the Transferred Employees as the employer of record, and then (ii) functionally assigns them to work exclusively at P4L, where their titles and lines of reporting will reside. As employer of record, PRF shall ensure that P4L complies with the covenants made herein with respect to the Transferred Employees.
  - (b) Health Insurance. The Transferred Employees shall be entitled to participate in PRF’s health insurance plan to the same extent that such employees were entitled to participate in PAA’s health insurance plan, and otherwise to the fullest extent permitted by applicable law and regulations.
  - (c) Severance Benefit. Any Transferred Employee who is deemed to be superfluous and is terminated without cause by P4L within the first twelve (12) months following the Effective Time shall be entitled to four (4) weeks of severance pay

from P4L for each year of service with PAA, with a minimum of three (3) months of severance pay and no more than a maximum of twelve (12) months of severance pay. Any Transferred Employee who is terminated without cause within the next twelve (12) months following the Effective Time would be entitled to a reduced severance benefit of 50% of the foregoing calculation. P4L will, through the period of severance based on years of service accrued, continue to provide healthcare benefits in the then-current form and at the then-current employee premium, however, the health benefit shall cease if the terminated employee has or acquires access to health benefits through another source, such as a spouse or a new job. During such period of severance, such terminated employee may be required as a condition to continued health benefits to furnish such documentation or self-certification to prove lack of access to health benefits through a spouse or a new job as P4L may reasonably request.

- (d) Employee Benefit Plans. P4L agrees to recognize the Transferred Employees' years of service with PAA for purposes of administering vacation and sick days and, as such, to waive any waiting period for the initiation of other benefits with P4L.

3. Transfer of Assets to and Assumption of Liabilities by PRF. To enable P4L to carry out activities related to PAA's Alumni Engagement mission on behalf of PAA, as reflected in the Mission and Vision, at the Effective Time:

- (a) Transfer of Assets. Other than the "Excluded Assets" (as hereinafter defined), PAA hereby transfers, assigns, grants, conveys and delivers to P4L all of PAA's right, title and interest in the properties, contracts (specifically including the lease for PAA's offices at 403 W. Wood Street (the "PAA Lease")) and other assets of every kind, character and description, whether tangible or intangible, whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, used in and associated with PAA's operation, including the Alumni Engagement functions, including but not limited to those identified in a fixed assets list attached hereto as Exhibit B, as well as any goodwill associated with such functions (the "Transferred Assets"). All paper, computer and cloud-stored records associated with PAA's operation, including, without limitation, all alumni and donor records (collectively, the "Records"), are expressly included in the Transferred Assets conveyed hereunder, however, P4L shall grant to PAA reasonable access to such records to continue its "Core Functions" (as hereinafter defined), including, without limitation, the ability to validate PAA elections. The Excluded Assets shall mean (i) the Investment Account, (ii) PAA's trademarks, trade names, trade dress, and any visual images, elements or symbols used to identify the PAA brand, including the PAA logo and its coloring and design (some of which are being licensed to P4L via the PAA License Agreement), (iii) sufficient cash and/or short term investments to cover known "Retained Liabilities" (as hereinafter defined), and (iv) any other assets included in an excluded assets list attached hereto as Exhibit C.

(b) Liabilities.

- (i) Other than (A) ongoing liabilities associated with contracts or leases included in the Transferred Assets, but only to the extent applicable to the period after the Effective Time and (B) the obligations with respect to lifetime members as detailed in Section 3(b)(iii) below (collectively, the “Assumed Liabilities”), neither P4L nor PRF hereby assumes or shall assume any of the debts, operating expenses, taxes, obligations and other liabilities of any kind, character and description, whether accrued or unaccrued, known or unknown, contingent or otherwise, of PAA.
- (ii) Other than the Assumed Liabilities, PAA retains and shall retain all of the debts, operating expenses, taxes, obligations and other liabilities of every kind, character and description, whether accrued or unaccrued, known or unknown, contingent or otherwise, that are or were incurred by PAA at any time (the “Retained Liabilities”).
- (iii) PAA has approximately 30,000 lifetime members who paid lifetime membership dues and who are no longer obligated to pay dues. P4L shall honor such lifetime membership arrangements at the current level of offerings for such lifetime members or provide similar membership benefits to them at no additional cost. To the extent that P4L makes new offerings available to such lifetime members, P4L could charge additional fees to those lifetime members taking advantage of such new offerings.

- (c) Effectiveness of Transfer, Assignment and Assumption. The transfer and assignment of any particular Transferred Asset and the assumption of any particular Assumed Liability shall be subject to the consent of such third parties as may be required under the terms of any instrument, contract, or other agreement (collectively, the “Contracts”) to which PAA is a party or by which it is bound. To the extent such third-party consent has not been obtained on a particular Contract prior to or at the Effective Time, PAA shall use its best efforts to obtain such consent following the Effective Time. If such third-party consent on a particular Contract cannot be obtained by the best efforts of PAA, and if the transfer, assignment or assumption, as the case may be, without the consent of the third party would be a breach of, or result in a violation under, such Contract, the transfer, assignment or assumption of such Contract shall be deemed to not have occurred under this Agreement unless otherwise agreed by the parties to this Agreement. In addition to continuing to use its best efforts to obtain any consents desired by P4L, PAA shall, in lieu of such consents, use its best efforts to otherwise secure for P4L the benefit of such Contracts (including, without limitation, via a subcontracting arrangement), but PAA shall not be responsible for any fees, liabilities, or other obligations related to such consents (or failure to obtain such consents).
- (d) Cooperation as to Transferred Assets. PAA shall reasonably cooperate to the extent necessary for P4L to effectively utilize, maintain and maximize the usefulness of the Transferred Assets.

4. Mutual Board Representation.

- (a) PAA has amended its By-Laws, effective as of the Effective Time, to reflect that the P4L Board has the right to designate one of its members who is a University trustee selected through the PAA selection process to be a director of the PAA Board, and such P4L-designated director shall be a member of the PAA Executive Committee, with all other directors of the PAA Board and PAA Executive Committee selected by PAA per its By-Laws.
- (b) PRF has caused the P4L operating agreement, effective as of the Effective Time, to be in the form attached hereto as Exhibit D, and such operating agreement reflects that:
  - (i) P4L shall be managed by a Board of Managers comprised of five (5) managers (collectively, the “P4L Board”): (A) the President of the University; (B) three (3) University trustees (the “Trustee Representatives”); and (C) a representative of PAA (the “PAA Representative”);
  - (ii) PAA has the right to appoint the PAA Representative;
  - (iii) At least one (1) of the Trustee Representatives will be a member of the Board of Trustees via the PAA selection process described in the second Recital of this Agreement;
  - (iv) The remainder of the P4L Board is selected by process or formula described in the P4L operating agreement that does not entail any direct PRF involvement;
  - (v) The number of managers on the P4L Board may not be increased, nor the authority of the P4L Board curtailed, absent unanimous agreement of the P4L Board;
  - (vi) The governing structure of P4L may not change absent unanimous agreement of the P4L Board; and
  - (vii) PRF (or any subsequent member) shall have no direct authority to affect the decisions or composition of the P4L Board.

5. Purdue Alumni Advisory Council. P4L shall cause to be created a Purdue Alumni Advisory Council (“PAAC”) comprised of a number of members not to exceed 20 members. PAA shall appoint the members of the PAAC. The PAAC shall be an advisory body to the P4L Chief Executive Officer (“CEO”) for the purpose of providing advice on Alumni Engagement functions and matters to ensure the mission of PAA is sustained in the P4L model, but shall have no voting or approval authority. Such advice shall take the form of a report and/or recommendations of the PAAC to be delivered to the P4L Board up to two times each year.

6. Services and Meeting Space Agreement. PAA and P4L are concurrently entering into a Services and Meeting Space Agreement, in substantially the form attached hereto as Exhibit E



(the “Services and Meeting Space Agreement”), whereby P4L shall provide to PAA certain support services and meeting space to enable PAA to continue its operations following the Effective Time and also provide alumni engagement services in support of PAA’s Alumni Engagement mission as reflected in the Mission and Vision.

7. Investment Agreement. The parties have entered or are concurrently entering into an investment management agreement, in substantially the form attached hereto as Exhibit F (the “Outside Organization Participation Agreement”), pursuant to which PRF shall, through its Office of Investments, provide all necessary services for the proper administration and investment of the Investment Account and other investable assets of PAA.
8. License Agreements. The parties are concurrently entering into two license agreements, in substantially the forms attached hereto as Exhibit G-1 and Exhibit G-2 (the “License Agreements”), each of which shall become effective at the Effective Time, and pursuant to which (i) PAA is licensing to P4L the right to use certain of PAA’s trademarks, tradenames, trade dress and logos (the “PAA License Agreement”), and (ii) Purdue is licensing to PAA the right to use certain University trademarks, tradenames, trade dress and logos.
9. P4L Terms and Conditions.
  - (a) Organization. P4L represents and warrants that it is a nonprofit limited liability company duly organized and validly existing under the laws of the State of Indiana with full power and authority to carry on its business as it is now being conducted, to own or hold under lease the assets which it owns or holds under lease and to perform all of its obligations under the agreements and instruments to which it is a party or by which it is bound.
  - (b) No Assumption of Liabilities. Other than the Assumed Liabilities and any other liabilities of PAA for which P4L becomes responsible as contemplated by this Agreement, the Services and Meeting Space Agreement or the Outside Organization Participation Agreement, P4L shall not assume any obligations or liabilities of PAA, including but not limited to the Retained Liabilities, all of which PAA agrees to pay, settle or satisfy in compliance with applicable legal requirements or in fulfillment of applicable contractual requirements.
  - (c) P4L CEO. P4L will consult with the PAA Board Chair (or that person’s nominee) when selecting a CEO of P4L; however, the P4L Board, by majority vote which must include the PAA Representative, shall have the sole authority to select the P4L CEO.
  - (d) P4L Engagement Leadership. P4L and PAA shall jointly select the individual responsible for leading the staff performing the alumni engagement function. The joint selection process shall include defining the job description, publicizing for potential candidates, the interviewing process and the final selection of the employee. Both P4L and PAA must approve the hire and the position shall be filled by March 1, 2021 (although P4L and PAA may mutually agree to extend this deadline). All subsequent hires for the lead engagement position shall be subject to approval by the PAA Executive Committee by majority vote.

- (e) Protective Provisions: Potential to Become Standalone 501(c)(3). To the extent not otherwise provided herein, in the other agreements contemplated hereby, or in the governing documents of the parties, the parties confirm and agree as follows:

(i) Board Governance.

- a. *Control.* The activities and affairs of P4L will be governed by the P4L Board, which will ensure P4L's mission is carried out consistent with the P4L contractual obligations to PAA.
- b. *Composition.* The composition of the P4L Board is hardwired in P4L's operating agreement and will be replicated in the by-laws of NewCo (defined below) in order to guarantee that the makeup of the board overseeing P4L affairs will not change if NewCo becomes P4L's successor or if P4L remains as an organization within PRF.
- c. *Covenants.* P4L's operating agreement provides that P4L may not amend its operating agreement to change the hardwired P4L Board composition absent PAA's consent. Section 11 of this Agreement includes PRF's covenant not to interfere with the P4L Board's authority to oversee, administer and control P4L's operations.

(ii) Preparation of NewCo for Possible Future Use.

- a. *New Nonprofit Corporation.* Prior to or as soon as practicable following the Effective Time, P4L, with Purdue's assistance, shall cause to be formed under Indiana law a new nonprofit corporation ("NewCo"), which shall remain in place until deployed, if at all, as described below. NewCo's formation on or about the Effective Time is to ready it, in the event that it is needed, as determined by the remainder of this Section 9(e)(ii).
- b. *Mission Effectiveness Meetings.* On or about each of the 1-year anniversary and the 2-year anniversary of the Effective Time, the P4L Board will host a meeting with PAA Board representatives, the purpose of which will be to assess P4L's then-current effectiveness in advancing the Alumni Engagement mission as a subsidiary of PRF.
  - (1) ***Request to authorize NewCo's further readiness.*** In connection with the 1-year anniversary meeting, P4L will present (i) the results of its research and evaluation of any new employee benefit plans that would be required for NewCo as a new standalone entity, (ii) a list of other issues needing to be addressed to establish NewCo as P4L's successor, including employee transition and retention risks, and (iii) an assessment of the cost of these actions. The PAA Board will also consider other items that it considers

important as part of the decision to determine whether P4L is effectively advancing the Alumni Engagement mission as a subsidiary of PRF as of such 1-year anniversary.

- A. If, following the 1-year meeting, a simple majority of the PAA Board votes to approve a request to build out NewCo's further readiness to serve as a successor standalone vehicle for P4L, P4L will cause NewCo to prepare and file with the IRS an application for 501(c)(3) tax-exempt status, either as (i) a 509(a)(1) or 509(a)(2) public charity organization, or (ii) a 509(a)(3) supporting organization, as further described below.
  - B. In deliberating on this action, the PAA Board will give due consideration to (i) the report presented by P4L on the costs and issues associated with standing up NewCo as a standalone entity, (ii) a preliminary assessment of NewCo's ability to meet the requisite "support tests" to achieve and maintain public charity status under Code Section 509(a)(1) or 509(a)(2) or its ability to be a "supporting organization" under Code Section 509(a)(3), and (iii) other items the PAA Board considers important to its decision.
  - C. P4L leadership, including the President of the University as a P4L Board member, will be allowed to make a further supplemental presentation to the PAA Board prior to its vote on this action. The PAA Board's deliberations and voting will be exclusively within the PAA Board, including the P4L Board-designated member of the PAA Board.
  - D. If the PAA Board votes to approve building out NewCo to serve as a standalone vehicle for P4L as described above, the parties will conduct a more detailed joint assessment of NewCo's ability to meet and maintain the requisite support tests as a 509(a)(1) or 509(a)(2) public charity based on then-current conditions and forecasts. If the parties are unable to agree that NewCo should attempt to qualify for such status, the parties will take appropriate actions to cause NewCo to qualify instead as a 509(a)(3) supporting organization.
- (2) ***Action to approve corporate change.*** If, following the 2-year anniversary meeting, a 2/3 majority of the PAA Board members then serving are not satisfied with P4L's ability to

advance the Alumni Engagement mission as a subsidiary of PRF and vote to formalize NewCo, then P4L will take necessary steps to cause NewCo to become the successor to P4L.

- A. P4L leadership, including the President of the University as a P4L Board member, will be allowed to make a further presentation to the PAA Board prior to its vote on this action. The PAA Board's deliberations and voting will be exclusively within the PAA Board, including the P4L Board-designated member of the PAA Board.
- B. Although the structure of such a transaction would remain to be determined, it would likely take the form of a merger of P4L with and into NewCo, with NewCo serving as the surviving entity.
- C. As described above, the composition of the board of NewCo would be identical to the prior P4L Board composition, and this would be hardwired in NewCo's by-laws from the time of its incorporation. In addition, the provisions of Article V (Management) in the P4L operating agreement (Exhibit D) would be replicated in NewCo's bylaws from the time of its incorporation.
- D. The transaction would be conditioned on NewCo's (i) receipt of a determination letter from the IRS concerning its 501(c)(3) tax-exempt status, and (ii) establishment of all new benefit plans necessary to absorb P4L employees.
- E. If, after the 2-year anniversary meeting, no request has been approved by the PAA Board to deploy NewCo as P4L's successor, P4L may take steps to dissolve NewCo—thus resolving the question of its future use as a standalone vehicle.
- F. For purposes of clarity, all of these provisions regarding NewCo are separate from the termination provisions described in Section 12 below.
- G. Nothing in this Subsection 9(e)(ii) shall prevent the P4L CEO, with the approval of the P4L Board (which must include the approval of the PAA Representative), from causing NewCo to become

P4L's successor, whether by merger or another transaction.

10. PAA Terms and Conditions.

- (a) Organization. PAA represents and warrants that it is duly organized and validly existing nonprofit corporation under the laws of the State of Indiana with full power and authority to carry on its business as it is now being conducted, to own or hold under lease the assets which it owns or holds under lease and to perform all of its obligations under the agreements and instruments to which it is a party or by which it is bound.
- (b) Absence of Undisclosed Liabilities. PAA represents and warrants that it has no material indebtedness or, to its knowledge, liability with respect to the Transferred Assets or Transferred Employees which has not been disclosed to P4L.
- (c) Retained Liabilities. PAA acknowledges its responsibility to pay, settle or satisfy all of the Retained Liabilities in compliance with applicable legal requirements or in fulfillment of applicable contractual requirements.
- (d) No Engagement or Development Activities. From and after the Effective Time, PAA will carry out its responsibilities for Alumni Engagement activities in support of PAA's Alumni Engagement mission through exclusive contracts with P4L as reflected in this Agreement and the Meeting Space and Services Agreement (collectively, the "Services Agreements"). PAA will not otherwise engage in any Alumni Engagement activities which are the responsibility of P4L under the Services Agreements. PAA will continue to have direct responsibility for all other of PAA's core functions ("Core Functions") in support of PAA's purpose and mission, including, but not limited to (i) identification, vetting and selection of directors for the PAA Board and PAA Executive Committee and conducting the business of the PAA Board, the PAA Executive Committee, and any other committees needed to conduct the business of the PAA Board, (ii) appointment of members to the PAAC, (iii) selecting the PAA Representative; (iv) complying with, and monitoring the compliance of the other parties to, the terms of this Agreement, the Outside Organization Participation Agreement, the Meeting Space and Services Agreement, the PAA License Agreement, and any other agreements or arrangements contemplated by this Agreement, (v) identifying, screening, interviewing and selecting trustees to the Board of Trustees in accordance with Indiana law, (vi) conducting the annual meeting of alumni as required by PAA's By-Laws and any applicable laws (including IC 21-23-3-3), which shall be done in coordination with P4L to avoid duplicative and conflicting messaging, (vii) attending to PAA's legal and tax filing obligations, and (viii) any other responsibilities, functions, and activities contemplated by this Agreement or the other agreements contemplated by this Agreement. For clarity, PAA shall not engage in any Alumni Engagement activities or functions which are the responsibility of P4L under the Services Agreements as long as PAA remains a part of P4L, but none of the foregoing Core Functions shall be considered to be Alumni Engagement activities or functions. With respect to the matters described in clauses

(i), (v), (vi) and (vii) of this paragraph, PAA shall be aided by P4L support staff. Additionally, P4L staff will assist the PAA Board with all communications and website development/support required for PAA to continue its ongoing work as contemplated by the Services Agreements.

11. PRF Non-Interference. For the duration of this Agreement, PRF covenants and agrees that it shall not take any action that would interfere with the P4L Board's authority to oversee, administer and control P4L's operations, including as to Alumni Engagement; provided, however, that PRF shall not, and shall be under no obligation to, financially underwrite or subsidize P4L's operations with PRF funds should P4L operate at any point at a budget deficit. PRF (or any subsequent member of P4L) shall have no direct authority to affect the decisions or composition of the P4L Board.
12. Term; Termination; Events of Termination. Although the parties contemplate the Purdue for Life concept being a long-term fit for all parties that lasts indefinitely, both PAA and P4L recognize the need for an exit strategy in certain limited circumstances.

(a) Events of Termination.

- (i) Mutual Events of Termination. Either PAA or P4L shall have the right to terminate this Agreement upon a material default or material breach by the other of the terms of this Agreement, which material default or material breach has not been cured within sixty (60) days after delivery of notice by the non-defaulting party of such default or breach.
- (ii) PAA Events of Termination. PAA shall have the right to terminate this Agreement by giving sixty (60) days prior written notice to the other parties upon occurrence of any of the following: (A) P4L has a receiver appointed or an assignment for the benefit of creditors, or becomes unable to pay its debts as they become due, (B) if the Services and Meeting Space Agreement is terminated by PAA due to P4L not applying funds available for Alumni Engagement functions to same, (C) if an application for 501(c)(3) tax-exempt status is not filed as and when required in Section 9(e)(ii), (D) P4L shifts to a predominant development model as defined in Exhibit H, (E) future University leadership no longer supports an integrated advancement strategy, or (F) PAA determines that P4L is no longer working as intended as reflected in the Mission and Vision, such determination to be based on PAA's reasonable and objective assessment (provided to P4L in writing) of P4L's performance from the periodic reviews conducted in accordance with Section 7 and Exhibits A and B of the Services and Meeting Space Agreement and any other information available to PAA.
- (b) Effect of Termination. A termination of this Agreement pursuant to Section 12 shall automatically cause the termination of the PAA License Agreement and the Services and Meeting Space Agreement.
- (c) Termination Obligations. Following a termination, the parties will negotiate in good faith to devise an equitable arrangement to return PAA to such state as it

existed as of the Effective Time to the extent practicable. Without limiting the prior sentence, the PAA Lease would be reinstated in a manner as similar as legally and logistically possible to the circumstances of the PAA Lease as of the Effective Time, including, without limitation, at least the same amount of time remaining on the term of the PAA Lease as of the Effective Time before it terminates. For clarity, but subject to the first sentence of this paragraph and subject to PAA's access rights to Records set forth in Section 3(a), assets acquired or records created after the Effective Time by P4L, even if derivative works based on PAA's records, would belong to P4L notwithstanding a termination of the Services Agreements or the PAA License Agreement.

13. Communication and Notice. PAA shall promptly forward to P4L any notices, statements, actions, and related documents or correspondence received by PAA and related to the ongoing purposes or uses of the Transferred Assets and the conduct of Alumni Engagement functions.
14. Notices. All notices shall be in writing and shall be delivered personally, sent by facsimile transmission or sent by certified or express mail, postage prepaid as follows:

If to PAA:	Purdue Alumni Association, Inc. Dick and Sandy Dauch Alumni Center Attention: Dan Dawes, Chairman of the Board 403 W Wood St West Lafayette, IN 47907-2007 Fax: (765) 494-9179
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If to P4L:	Purdue for Life Foundation, LLC Dick and Sandy Dauch Alumni Center Attention: Matt Folk, CEO 403 W Wood St West Lafayette, IN 47907-2007 Fax: (765) 494-7035
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If to PRF:	Purdue Research Foundation Kurz Purdue Technology Center Attention: Scott Seidle, CFO 1281 Win Henschel Blvd. West Lafayette, IN 47906 Fax: (765) 463-3217
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If to Purdue:	Purdue University Hovde Hall, Room 200 Attention: Mitchell E. Daniels, Jr., President 610 Purdue Mall West Lafayette, IN 47907 Fax: (765) 494-7875
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15. Further Cooperation. Following the Effective Time and from time to time thereafter, the parties hereto covenant and agree to execute and deliver, or cause to be executed and delivered, such other documents, agreements and instruments, and to take such further actions, as may be reasonably required or desirable to effect the transactions contemplated herein.
16. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana without regard to the conflict of laws and rules of such state.
17. Resolution of Disputes. The following provisions (the “ADR Mechanism”) shall govern the resolution of any controversy or dispute between the parties arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim a party may assert against the other based on contract, tort or statute (a “Dispute”).
- (a) *Negotiation*. Any Dispute shall first be resolved through good faith negotiations. Toward this end, the parties shall use their best efforts to settle the Dispute by direct negotiations between their designated officers or representatives having appropriate settlement authority. If such officers or representatives cannot resolve the Dispute within thirty (30) days, then the matter shall be referred to senior executives designed by the parties, who will meet to resolve the Dispute.
  - (b) *Mediation*. If the matter has not been resolved within sixty (60) days of either party’s initial request for formal negotiation pursuant to the foregoing provision, then either party may terminate the negotiations by written notice to the other party, whereupon the parties shall submit the Dispute to mediation before a mutually agreeable neutral mediator. In initiating and conducting such mediation, the parties shall comply with the provisions of Rule 8 (Optional Early Mediation) of the Rules for Alternative Dispute Resolution (the “ADR Rules”) under the Indiana Rules of Court, as the same may be amended from time to time. The neutral mediator required by the mediation procedure shall be a lawyer mutually selected from the list of registered mediators maintained by the Indiana Supreme Court Commission for Continuing Legal Education under the ADR Rules.
  - (c) *Arbitration*. If the Dispute has not been resolved through mediation within ninety (90) days of the above-referenced notice of termination of negotiations (or if the parties are unable to agree to a neutral mediator within such 90-day period), then the Dispute shall be settled, upon mutual agreement of the parties to the Dispute, by final and binding arbitration administered by a neutral arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), except that the provisions of these Articles will control over the AAA rules. Each party shall bear all of their own costs of arbitration; *provided, however*, that the fees of the arbitrator shall be divided equally among the parties.
    - i. The arbitrator must decide the dispute in accordance with the substantive law of the State of Indiana. This requirement does not, however, mean that the award is reviewable by a court for errors of law or fact.
    - ii. The parties agree that discovery may be ordered as the arbitrator deems just and reasonable given the size and complexity of the dispute.



- iii. The parties expressly intend that any dispute arising under this Agreement will be resolved as between them alone, so that no other dispute with any third party(ies) may be consolidated or joined with the dispute.
  - iv. Following the arbitration hearing, the arbitrator will issue an award and a separate written decision which summarizes the reasoning behind the award and the legal basis for the award. The arbitrator may not award extra-contractual damages, including exemplary or punitive damages, and may not require one party to pay another party's costs, fees, attorney fees, or expenses. The award of the arbitrator will be binding on each party and not appealable.
  - v. Notwithstanding anything in the foregoing to the contrary, the procedures outlined in this ADR Mechanism shall not (i) limit a party's right to seek injunctive relief with respect to a breach or threatened breach of this Agreement, or (ii) apply to any disputes regarding the ownership of and/or rights to intellectual property, including the scope, validity and enforceability of trademarks, it being understood that any such intellectual property disputes shall be submitted to a court of competent jurisdiction in Tippecanoe County, Indiana (in which the matter shall be tried to a court and not to a jury and the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs); provided, that the process outlined in Section 7 of that certain Memorandum of Understanding and Mutual License Agreement of even date herewith between Purdue and PAA shall not be deemed a dispute covered by this clause (ii) of subsection 17(c)(v).
18. Expenses. Except as may be otherwise provided in the Services and Meeting Space Agreement or the Outside Organization Participation Agreement, each of the parties will pay its own costs, expenses and fees incident to this Agreement and in preparing to consummate and consummating the transactions contemplated hereby.
19. Entire Agreement. This Agreement (including the exhibits hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement (including the exhibits hereto) supersedes all prior agreements and understandings and representations and warranties between the parties with respect to the subject matter hereof.
20. No Assignment. Neither this Agreement nor any of the rights or obligations of the parties hereunder may be assigned to or assumed by any other person or entity.
21. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto, and nothing herein express or implied will give or be construed to give any person or entity other than the parties hereto any legal or equitable rights hereunder.
22. Counterparts. This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if signatures hereto were upon the same instrument.
23. Headings. The headings in this Agreement are for convenience of reference only and will not control or affect the meaning or construction of any of the provisions hereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**THE PURDUE ALUMNI ASSOCIATION, INC.**

By: \_\_\_\_\_  
Daniel Dawes, Chairman

**PURDUE FOR LIFE FOUNDATION, LLC**

By: \_\_\_\_\_  
Matthew D. Folk, President and CEO

**PURDUE RESEARCH FOUNDATION**

By: \_\_\_\_\_  
Brian E. Edelman, President

**PURDUE UNIVERSITY**

By: \_\_\_\_\_  
Mitchell E. Daniels, Jr., President

## **Exhibit A**

### **Mission and Vision**

#### **MISSION – Purdue for Life Foundation**

Preamble: The rich history of the Alumni Association since 1878 has been to champion personal, professional, and intellectual success in the lives of all Purdue alumni.

The Purdue for Life Foundation will inspire wellbeing in the lives and global communities of ALL Purdue Alumni, Students, and Friends, while advancing Purdue University through deepening the sense of value experienced in continued association with the university.

#### **VISION – Purdue for Life Foundation**

The *Purdue for Life Foundation* is the cornerstone for engagement, development and stewardship at Purdue. It will be a robust and purposeful interdependent community connecting alumni and friends to Purdue, the university with alumni, and alumni with each other.

**Exhibit B**

**Transferred Assets**

**PAA to provide**

**Exhibit C**

**Excluded Assets**

**PAA to provide**

**Exhibit D**  
**Operating Agreement**

Attached

**Exhibit E**

**Services and Meeting Space Agreement**

Attached

**Exhibit F**

**Outside Organization Participation Agreement**

Attached



**Exhibit G-1**

**Memorandum of Understanding and Mutual License Agreement**  
**(Purdue to PAA)**

Attached

**Exhibit G-2**

**Memorandum of Understanding and Mutual License Agreement**  
**(PAA to P4L)**

Attached

## **Exhibit H**

### **Definition of Predominant Development Model**

For purposes of this Joint Plan, a “predominant development model” is an operating model that focuses primarily on fund development, stewardship, and donor relations, with the primary objective of fundraising for the University’s benefit, while giving only incidental attention to alumni engagement activities.

**OUTSIDE ORGANIZATION PARTICIPATION AGREEMENT  
BETWEEN  
PURDUE ALUMNI ASSOCIATION, INC.  
AND  
PURDUE RESEARCH FOUNDATION**

This Outside Organization Participation Agreement (this “Agreement”) is entered into and effective at the close of business on March 31, 2021 (the “Effective Time”), by and between the Purdue Alumni Association, Inc., an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PAA”), and Purdue Research Foundation, an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PRF”).

**RECITALS**

**WHEREAS**, PAA and PRF, along with Purdue for Life Foundation, LLC and Purdue University, are parties to that certain Joint Plan and Reorganization Agreement (the “Joint Plan”), of even date herewith; and

**WHEREAS**, pursuant to the Joint Plan, PAA desires to facilitate the continuation of PRF’s investment management services over the PAA “Investment Account” (as that term is defined in the Joint Plan), which Investment Account is currently commingled with funds of PRF and others in the Unitized Endowment Pool (the “Pool”); and

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained in the Joint Plan and herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

**AGREEMENT**

1. Services. Any prior agreement between PRF and PAA as to the Investment Account, including the Investment Management Agreement dated as of December 31, 2005, shall terminate and be of no further force and effect as of the Effective Time. Throughout the term of this Agreement, PRF shall provide, by and through the Office of Investments, all necessary services for the proper administration, management and investment of the Investment Account. The Investment Account shall include participating units of the Pool in the Investment Account as of the Effective Time, as well as any future additions to the Investment Account.
2. Investment Authority. PAA grants to PRF complete discretion as to all investment decisions regarding the Investment Account, including, without limitation, authority to buy, sell, invest in, hold for investment, commingle with PRF’s own investments or the investments of others, own, assign, and sell any investment instrument with respect to an item of property in the Investment Account. PRF is authorized to receive and collect the income, interests, dividends, and profits on the Investment Account, and to add any of same not distributed to the Investment Account.

3. Investment Policy. PAA has reviewed and accepted PRF's Endowment Investment Policy (the "Investment Policy") as set forth on Exhibit A attached hereto and made a part hereof, confirms that the Investment Policy reflects the investment goals and objectives established by the Finance Committee of PAA's Board of Directors, and acknowledges that its terms are acceptable to PAA. PAA acknowledges and agrees that PRF may amend such Investment Policy from time to time in its sole and absolute discretion.
4. Investment Managers/Fees. PAA acknowledges that PRF has in the past and may in the future retain investment management firms to carry out the management and investment of the Pool. PRF has the sole and absolute right to discontinue the use of any of its current investment managers, to retain or not retain others, to re-allocate the types or proportions of investments in the Pool managed by any of its investment managers, to discontinue use of its current brokerage firm, to retain or not retain another brokerage firm, and to transfer the Pool to any successor brokerage firm or firms.
5. Risks of Participation. The market value of PAA's participating units in the Pool which represent the Investment Account will vary from time to time based on the market value of the Pool, in accordance with the Investment Policy. PAA represents that it understands the risks associated with participating in the Pool and the Investment Policy. PAA acknowledges and agrees that the Investment Account is intended to be a long-term investment of non-operational funds.
6. Reports. PRF agrees to provide to PAA monthly reports showing the investment performance of the Pool, it being understood that such reports shall be presented on an aggregate Pool basis and not by individual investment accounts within the Pool. As part of this monthly reporting, and consistent with past practice, PRF will also provide to PAA a monthly accounting report, historically titled "Balance Sheet with Investment Detail – By Key, Key 8110506," which represents a monthly balance sheet and income statement for the PAA Investment Account on an individual investment account basis. PRF will maintain investment records that provide documentary support for reconciliations and all other administrative services performed, and will do so in accordance with applicable record retention laws and policies. The records will be maintained and made available to PAA upon request for inspection, copying and audit on reasonable notice during regular business hours.
7. Fees and Expenses. All fees, commissions, expenses, and other administrative costs charged or incurred by the investment managers, brokerage firms and PRF with respect to the Pool shall be divided among and paid by all participants in the Pool, including PAA, in the same proportion as their respective percentage shares in the Pool.
8. Distributions, Additional Deposits, and Withdrawals from Investment Account. PAA shall be entitled to receive distributions and to make additional deposits and withdrawal/redemptions from the Investment Account upon the following terms and conditions:
  - (a) Regular Distributions. Regular distributions from the Investment Account shall be in accordance with the spending policy specified in the Investment Policy and shall be paid and distributed in accordance with the terms thereof.
  - (b) Additional Deposits. Subject to PRF's retained right to reject any particular deposit to the Investment Account, PAA shall have the right to make additional deposits into the Investment

Account only on the first working day of a calendar quarter. Any such permitted additional quarterly deposit shall be in a sum not less than \$10,000.00, must be in the form of cash or immediately available funds, and must be received by PRF not later than the first working day of the calendar quarter for which such deposit is to be effective.

- (c) Withdrawal/Redemptions. PAA shall have the right to withdraw/redeem participating units in any part up to the entire value of the Investment Account in excess of the regular distributions provided in subparagraph 8(a) above only as of March 31, June 30, September 30 and December 31 of each year (or if such date falls on a Sunday or other non-business day, then on the last business day preceding such date); provided, that PAA shall give sixty (60) days' advance written notice to PRF of any such intended withdrawal. Notwithstanding any other limitations of this subparagraph (c), PAA shall have the right to withdraw/redeem participating units up to a value of \$500,000 upon 15 days advance written notice to PRF at any time. Any withdrawals shall be paid to PAA within thirty (30) days of the effective date of such withdrawal. No withdrawal/redemption may be made in excess of the value of the participating units of the Pool in the Investment Account.
- (d) Limitation on Additional Withdrawal/Redemptions. Notwithstanding the provisions of subparagraph 8(c) above, PAA shall not have the right to withdraw less than all of the Investment Account if the effect of such partial withdrawal would be to reduce the value of PAA's Investment Account to a sum less than \$25,000.00. For the avoidance of doubt, a regular distribution pursuant to subparagraph 8(a) above which reduces the value of the Investment Account below \$25,000.00 shall not be prohibited.

9. No Investment Advice. PAA acknowledges that PRF is not by virtue of this Agreement providing any investment advice to PAA or otherwise, or representing or warranting the quality of any investments held by the Pool.

10. PAA Representations and Warranties. PAA represents and warrants to PRF as follows:

- (a) Qualified Charitable Organization. PAA is and will remain throughout the term of this Agreement a qualified charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is not a private foundation under section 509(a) thereof.
- (b) Corporate Authority, Due Authorization. PAA has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement has been duly authorized by PAA, and no other corporate proceeding on the part of PAA is necessary to authorize the execution and delivery of this Agreement. This Agreement has been duly executed and delivered on behalf of PAA and when executed and delivered on behalf of PAA will be a legal, valid and binding obligation of PAA. Neither the execution and delivery of this Agreement by PAA nor the consummation of the transactions contemplated hereby will (a) violate the Articles of Incorporation or By-laws of PAA, (b) violate any law, injunction, judgment or administrative order applicable to PAA or to any of the assets or properties of PAA, or (c) result in a default under the provisions of any agreement or instrument to which PAA is a party or to which any of its property is subject.

11. Indemnification of PRF. PRF may from time to time make certain investment decisions and/or review the performance of, and fees charged by, the investment managers, brokerage firms, accountants, and

other advisors retained by it; provided, however, that PRF shall not thereby have or incur any obligation or liability to PAA with respect to any possible claims, actions, or causes of action arising out of, or related in any way to: the results of any investments made with regard to the Pool; any acts or omissions in connection with the investment or management of the Investment Account by PRF, its affiliates, or PRF or affiliate employees, agents, officers, directors, trustees, and other representatives that are consistent with the standard of care established by the Uniform Prudent Management of Institutional Funds Act as codified at IC 30-2-12; the choice of certain investment decisions; the fees charged by the investment managers, brokerage firms, accountants or other advisors retained by PRF; or any other matters relating to investment decisions made with respect to, or performance of PAA's interests in, the Pool (the "Indemnifiable Subjects"). PAA expressly agrees to the foregoing provisions of this Section 11 and, with respect to the Indemnifiable Subjects, agrees to indemnify and hold harmless PRF and its affiliates, together with their respective employees, agents, officers, directors, trustees, and other representatives, from and against any and all liability, costs and expenses, including attorneys' fees, with regard to any and all possible claims, actions or causes of action whatsoever arising out of, or in any way related to, PAA's entering into this Agreement (including, without limitation, any market risks or losses resulting from PAA's participation in the Pool) or PRF's performance under this Agreement, including without limitation: any acts or omissions of PRF or its affiliates, or their respective employees, agents, officers, directors, trustees, and other representatives with respect to the Indemnifiable Subjects; the results of any investments made with regard to the Pool; or any other matters relating to the performance of PAA's Investment Account, its interests in the Pool, or the choice of investments made in the Pool.

12. Termination and Notice. This Agreement shall remain in force until terminated by either party upon thirty days' written notice to the other. Upon termination, PRF shall return the money value of the participating units in the Investment Account, net of any increase or decrease in market value as of the date of termination, to PAA. Notice shall be delivered in person or by registered mail as follows:

To PAA: Purdue Alumni Association  
Dick and Sandy Dauch Alumni Center  
Attention: Chair, Board of Directors  
403 W. Wood Street  
West Lafayette, IN 47907-2007

To PRF: Purdue Research Foundation  
Kurz Purdue Technology Center  
Attention: Treasurer  
1281 Win Henschel Blvd.  
West Lafayette, IN 47906

13. Confidentiality. All information furnished by either party to the other under this Agreement shall be treated as confidential and shall not be disclosed to third parties except with the express written permission of the non-disclosing party or as required by law.
14. Independent Contractor. PRF shall at times be deemed an independent contractor and not an employee, partner, or joint venture partner of PAA.

15. Governing Law. This Agreement shall be interpreted in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.
16. Modification; Assignment. This Agreement can only be modified upon written agreement of the parties. This Agreement may not be assigned by either party without the written consent of the non-assigning party.
17. Entire Agreement. This Agreement represents the full and complete understanding of the parties, and supersedes all agreements previously made between the parties, whether verbal or written, with regard to the subject matter of the Agreement.
18. Waiver. No delay or failure of either party to exercise any right under this Agreement, and no party or single exercise of the right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
19. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, administrators, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

THE PURDUE ALUMNI ASSOCIATION, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

PURDUE RESEARCH FOUNDATION

By: \_\_\_\_\_

Its: \_\_\_\_\_



## **SERVICES AND MEETING SPACE AGREEMENT**

This Services and Meeting Space Agreement (“Agreement”) is entered into and effective as of the close of business on March 31, 2021 (the “Effective Time”), by and between Purdue Alumni Association, Inc., an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PAA”), and Purdue for Life Foundation, LLC, an Indiana nonprofit limited liability company (“P4L”). Unless otherwise indicated, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Joint Plan (as defined below).

### **RECITALS**

**WHEREAS**, PAA and P4L, along with Purdue Research Foundation and Purdue University, are parties to that certain Joint Plan and Reorganization Agreement (the “Joint Plan”), of even date herewith; and

**WHEREAS**, pursuant to the Joint Plan, PAA will transfer substantially all of its non-investment assets and employees to P4L, along with certain Assumed Liabilities; and

**WHEREAS**, pursuant to the Joint Plan, PAA and Purdue Research Foundation (“PRF”) will enter into an Outside Organization Participation Agreement as of the Effective Time (the “Outside Organization Participation Agreement”), pursuant to which PRF will continue providing investment management services with respect to the Investment Account (as defined in the Joint Plan), and PAA will continue to receive ongoing distributions therefrom; and

**WHEREAS**, PAA will continue to have, from and after the Effective Time, certain Core Functions (as that term is defined in the Joint Plan) that will require administrative support services and space to conduct meetings relating to Core Functions; and

**WHEREAS**, P4L desires to furnish certain support services and meeting space in support of PAA’s Core Functions and carry out activities related to PAA’s Alumni Engagement (as that term is defined in the Joint Plan) mission.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained in the Joint Plan and herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

### **AGREEMENT**

1. Term and Termination. The term of this Agreement shall begin at the Effective Time and continue until termination of the Joint Plan. In addition, PAA shall have the right to terminate this Agreement in the event of P4L’s material breach or nonperformance of its obligations hereunder by giving written notice of such breach or nonperformance to P4L, and giving P4L sixty (60) days to respond to any noted deficiencies. In the event that P4L fails to adequately

address the material breach or nonperformance within such 60-day period, PAA may immediately terminate this Agreement.

2. Scope. During the term of this Agreement, P4L shall provide the following services in support of PAA's Core Functions and PAA's Alumni Engagement mission (collectively, the "Services"):
- (a) Administrative and support services for members of the PAA Board and PAA Executive Committee (as those terms are defined in the Joint Plan) to carry out administrative functions reasonably related to conducting the annual meeting of alumni as required by PAA's By-Laws and any applicable laws (including IC 21-23-3-3), in coordination with P4L to avoid duplicative and conflicting messaging;
  - (b) Administrative and support services for the identification, vetting and selection of directors of the PAA Board and for conducting the business of the PAA Board, the PAA Board Executive Committee and any other committees needed to conduct the business of the PAA Board;
  - (c) Administrative and support services for the identification, screening, interviewing and selection by PAA of trustees to the Purdue University Board of Trustees;
  - (d) Administrative and support services for members of the PAA Board and PAA Executive Committee to carry out administrative functions reasonably related to attending to PAA's ongoing need for financial reporting and financial management, as well as legal and tax filing obligations;
  - (e) Administrative and support services for PAA as reasonably requested in connection with communications and website development/support/administration and auditing, as required for PAA to continue its ongoing work as contemplated by the Joint Plan;
  - (f) P4L personnel time necessary to ensure the delivery of the Services being performed for PAA's benefit under this Agreement, including by, among other things, covering the salary, wages, benefits, supplies, and expenses of such P4L personnel in accordance with P4L's own compensation policies and plans, it being understood that such personnel will at all times during their employment by P4L continue to be under P4L's direction and control;
  - (g) Access for P4L personnel providing Services, on an as-needed basis, to usual office equipment (including computers, copiers, etc.) as well as all systems necessary for P4L to provide services to PAA as contemplated in this Agreement, subject to P4L's receiving all appropriate acknowledgements and agreements from such personnel setting forth applicable data access and information security protocols and agreeing to comply with policies designed to segregate and safeguard P4L systems and information;
  - (h) Maintenance of, and granting access to PAA representatives during business hours to, the Records (as such term is defined in the Joint Plan);
  - (i) Activities in support of PAA's Alumni Engagement mission; and

- (j) On request of PAA, office space to accommodate use by PAA Board members and officers, including but not limited to the Recording Secretary (as defined in PAA's bylaws), and such office space to be sufficient to store important documents, archives, pictures and other historical items.
3. Out of Scope. In providing the Services in support of PAA's Core Functions, P4L shall not be required to bear expenses relating to (a) travel, food or lodging for any person, (b) purchase of any equipment, license or subscription, (c) excessive or bulk/mass mailing or courier expenses, or (d) any substantial out-of-pocket expense.
  4. PAA Membership. In support of PAA's Core Functions, P4L will maintain records of PAA members who meet the PAA membership criteria established by the PAA Board. No changes to the criteria for PAA membership may be made by P4L without the review and approval of the PAA Board.
  5. Meeting Space. It will be necessary from time to time and in the course of PAA performing its Core Functions for the PAA Board and/or the PAA Executive Committee to meet as an entire body or as an ad hoc committee, possibly including others (such as candidates under consideration for nomination to the Purdue University Board of Trustees). As PAA will have no permanent space, P4L will make available to PAA, upon PAA's request, and with reasonable advance notice, appropriate and functional meeting space ("Meeting Space") within the Dick and Sandy Dauch Alumni Center (or P4L's successor headquarters) with sufficient capacity to accommodate the requested group size and with typical conference amenities such as conference telephones, subject in every case to availability and the length of advance notice given.
  6. Operating Income; Investment Account Distributions, Fees and Redemptions.
    - (a) PAA has transferred or is concurrently transferring to P4L substantially all of the non-investment assets and personnel formerly used by PAA to generate "Operating Income." For purposes of this Agreement, "Operating Income" shall mean (i) dues payable by members for their PAA membership, and (ii) any revenues or royalties collected pursuant to contracts included as part of the Transferred Assets. P4L will collect the Operating Income and spend or disburse it as described herein.
    - (b) PAA will retain that portion of distributions from the Investment Account ("Investment Distributions") necessary to cover PAA expenses not covered by this Agreement ("Retained Investment Distributions"), it being understood that PRF's fees and expenses associated with managing the Investment Account will be calculated and retained by PRF prior to any Investment Distributions being made, in a manner consistent with past practice and the terms of the Outside Organization Participation Agreement. On May 15 and November 15 of each year, PAA will promptly pay or cause to be paid to P4L the remaining portion of the Investment Distributions that are not Retained Investment Distributions to fund expenses relating to PAA's Core Functions and Alumni Engagement functions described herein.
    - (c) The parties intend that the sum of Operating Income and the portion of the Investment Distributions that are not Retained Investment Distributions (collectively, "Available Income") be used to fund expenses relating to PAA's Core Functions as well as

Alumni Engagement functions. Such Available Income shall be collected and spent or disbursed by P4L as follows:

- (i) First, P4L shall use Available Income as payment for P4L Services in support of PAA's Core Functions.
- (ii) To the extent that Available Income is sufficient to fully fund the payments under foregoing subsection 6(c)(i), such excess shall constitute "Available Engagement Income", which shall be used to fund Alumni Engagement as directed by P4L engagement leadership selected as per Section 10(d) of the Joint Plan with the concurrence of the P4L CEO. P4L may (and is expected to), but shall not be required to, contribute additional funds to Alumni Engagement.

- 7. Review, Budgeting and Payments. To facilitate and coordinate P4L's providing the Services in support of PAA's Core Functions and PAA's Alumni Engagement mission, PAA and P4L will carry out their respective elements of an annual planning and budget preparation process, as well as the resulting performance review, detailed in Exhibit A hereto. P4L and PAA will collaborate in good faith to coordinate their activities as necessary to enable P4L to perform the Services in the manner envisioned by this Agreement and the Joint Plan, it being understood that the annual plan and budget prepared by P4L will be designed to incorporate support for the PAA Core Functions and Alumni Engagement mission into a fully integrated operating model that also includes P4L's development, fundraising, athletics support and stewardship activities. To support the annual and quarterly reviews of Alumni Engagement provided in Exhibit A, P4L will report the tracking detail specified in each of the categories of Alumni Engagement set forth in Exhibit B. P4L will establish a baseline for the tracking detail within 12 months following the Effective Date. It is anticipated that the categories of tracking detail will be refined and upgraded over time subject to agreement of P4L leadership and the PAAC.
- 8. Payment/Fees. Not including amounts retained by PRF to cover fees and expenses associated with managing the Investment Account prior to making any Investment Distributions, the fees for Services, Meeting Space or other functions provided by P4L under this Agreement shall be included in the annual plan and budget developed and approved each year in accordance with Section 7 and Exhibit A. To the extent that PAA requests or requires additional services beyond the Services provided for in the then-current budget or meeting space that is in addition to the Meeting Space, appropriate adjustments will be made to the then-current budget to reflect the reasonable costs associated with the additional items, it being understood that in no event will PAA be required to make any out-of-pocket payment to P4L in the event the costs of such additional services or facilities exceed the amount of Available Income.
- 9. Warranties. P4L warrants that all Services provided by it under this Agreement shall be performed in a good and workmanlike manner and with that degree of skill and care that such party would normally exercise in performing similar services for itself in the ordinary course of conducting its own business, and that the provision of Services and Meeting Space shall comply with all applicable building laws, ordinances, and regulations of governmental agencies having appropriate jurisdiction.

10. Confidentiality. During the term of this Agreement and thereafter, P4L shall not disclose or use for the benefit of any person other than PAA any “Restricted Information” owned by or in the custody of PAA (a) which comes into P4L’s possession or (b) to which P4L is given access in the course of P4L providing Services or Meeting Space. For purposes of this Agreement, the term “Restricted Information” shall include, without limitation, confidential or proprietary information, any Social Security Numbers, any Protected Health Information, as that term is defined in 45 C.F.R. §160.103, as amended, of the Health Insurance Portability and Accountability Act (“HIPAA”) regulations, any Customer Information, as that term is defined in 16 C.F.R. § 314, as amended, of the Gramm-Leach-Bliley Safeguards Rule, any information contained in any Education Records, as that term is defined in 34 C.F.R. §99.3, as amended, of the Family Educational Rights and Privacy Act (“FERPA”) regulations, and any other information protected by any other applicable state or federal law imposing similar privacy or security obligations. It is not anticipated that the P4L-provided Services will entail P4L having access to any Protected Health Information, as defined in the HIPAA “privacy and security regulations.”
11. Security of Restricted Information. P4L represents and warrants that it has and maintains a comprehensive information security program containing appropriate administrative, technical and physical safeguards for the security and protection of Restricted Information. P4L further represents and warrants that its security program will be periodically reviewed, and appropriate updates will be implemented, to address any gaps identified in its security program. P4L agrees to make its security policies and procedures available to PAA upon reasonable request.
- (a) P4L expressly agrees to:
- (i) Protect the security and confidentiality of Restricted Information it receives or accesses hereunder in accordance with its information security program and this Agreement and further agrees to comply with the requirements of IC 4-1-10 concerning any social security numbers included in the Restricted Information.
  - (ii) Limit access to Restricted Information to those employees who have a legitimate business need to know the information.
  - (iii) Prohibit disclosure of any social security numbers included in the Restricted Information except as expressly permitted by IC 4-1-10.
  - (iv) Require all of its subcontractors and agents that receive, use or have access to Restricted Information to agree to implement reasonable and appropriate security safeguards to protect it and to agree in writing to the confidentiality and security requirements of this Agreement.
  - (v) Understand the requirements of IC 4-1-11 concerning breaches of security and notification of disclosures of social security numbers and personally identifiable information, and to immediately report to PAA any security incident involving any social security numbers or other Restricted Information of which it becomes aware, and to provide PAA with all information necessary to permit PAA to timely comply with the notification

provisions of I.C. 4-1-11 and its implementing rules. To the extent P4L is required to make its own notification under law concerning any Restricted Information, P4L agrees to cooperate with PAA regarding the notification process prior to making such notification.

(vi) Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as defined in 16 CFR 681.2) or that may arise in the performance of P4L’s activities, if P4L has access to customer information from covered accounts under the Red Flag Rules. P4L agrees that policies and procedures to detect relevant “Red Flags” are updated periodically. P4L further agrees to notify PAA of the detection of a Red Flag and to implement reasonable steps to prevent or mitigate identify theft.

(b) P4L represents and warrants that it will not use any of PAA’s Restricted Information for any purpose other than those permitted purposes set forth in this Agreement.

(c) At the completion of this Agreement, P4L will physically or electronically destroy beyond all ability to recover any and all Restricted Information provided to it. This includes any and all copies of the data such as backup copies created at any P4L site.

12. Governing Law. This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.

13. Indemnification. P4L agrees to indemnify PAA and hold it harmless from and against all liability, losses, damages, liens, and expenses (including reasonable legal fees) arising out of or connected with claims brought by third parties related to the Services performed by P4L hereunder, excepting only such liability as may result solely from the negligent acts of the PAA Board, PAA Executive Committee, or other PAA employees or personnel; provided, however, that P4L may not settle any such claims against PAA without PAA’s prior written consent.

14. Bankruptcy or Insolvency. In the event of any proceedings in bankruptcy or insolvency by or against P4L, or in the event of the appointment (with or without P4L’s consent) of an assignee for the benefit of creditors or of a receiver on behalf of P4L, PAA may terminate this Agreement forthwith.

15. Limitation of Liability. P4L shall give PAA the benefit of its best judgment and efforts in rendering the Services and providing the Meeting Space required under this Agreement. Except to the extent provided under applicable law or as expressly provided in Section 13 above, neither party shall be liable to the other party for any act or omission whatsoever of any employee, agent or representative acting on its behalf in the performance of Services or the provision of Meeting Space under this Agreement.

16. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and their respective successors or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.

17. Survival. The confidentiality and security requirements set forth in Sections 10 and 11 of this Agreement, and the limitations on liability in Section 15 of this Agreement, shall survive the termination of this Agreement.

18. Notices. Any notice or other correspondence required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been given if: (a) served personally, (b) sent by facsimile with confirmation of receipt, (c) sent by e-mail with an acknowledgment by the recipient of receipt, or (d) sent by first class mail, postage prepaid, to the addresses set forth below or to such other addresses as either party hereto may designate by notice to the other party.

Purdue For Life Foundation, LLC  
Dick and Sandy Dauch Alumni Center  
Attention: Matt Folk, CEO  
403 W Wood Street  
West Lafayette, IN 47907-2007  
E-mail: mdfolk@prf.org  
Fax: (765) 494-7035

Purdue Alumni Association, Inc.  
Dick and Sandy Dauch Alumni Center  
Attention: Dan Dawes, Chairman of the Board  
403 W Wood Street  
West Lafayette, IN 47907-2007  
E-mail: dddawes3@gmail.com  
Fax: (765) 494-9179

19. Further Assurances. Subject to the terms and conditions of this Agreement, the parties will use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to ensure the smooth and efficient performance of the Services and the other actions to be taken hereunder.

20. General. If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect. This Agreement contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings other than those expressly set forth herein. Amendments, modifications or changes of or to this Agreement must be made in writing and signed by a duly authorized representative of both parties. Neither party may assign any of its rights under this Agreement without the express prior permission of the other party. Subject to the foregoing sentence, this Agreement shall be binding upon PAA and P4L and their successors and permitted assigns. In performing the Services and providing the Meeting Space hereunder, each party will act solely as an independent contractor rendering professional services for the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, or joint venturer or partner between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

THE PURDUE ALUMNI ASSOCIATION, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

PURDUE FOR LIFE FOUNDATION, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_



## **Exhibit A**

### **Timeline for Annual Review, Budget and Payments Cycle**

July 1	Commence PAA and P4L fiscal year
Aug 15	P4L presents past year performance and new year plan to the PAA Board
Oct 15	Purdue Alumni Advisory Council (PAAC) meets with P4L team to review alumni engagement 1st quarter execution
Oct 16	PAAC reports its review of P4L alumni engagement execution and recommendations to the PAA Board
Nov 15	PAA semi-annual distribution of funds to P4L
April 1	Commence PAA budgeting and planning process
April 1	Commence P4L budgeting process
Apr 15	PAAC meets with P4L team to review alumni engagement 2 <sup>nd</sup> and 3rd quarter execution
Apr 16	PAAC reports its review of P4L alumni engagement execution and recommends adjustments for the next fiscal year to the PAA Board
Apr 30	Complete PAA budgeting and planning process
Apr 30	PAA to provide P4L with a forecast of expected distribution and input into its planning model as it relates to alumni engagement execution for the next fiscal year
May 15	PAA semi-annual distribution of funds to P4L
Jun 30	P4L completes plan and budget for the next fiscal year

## **Exhibit B**

### **Purdue for Life Engagement Scoring**

#### **EXPERIENTIAL**

Definition: Meaningful experiences created and operated to inspire alumni, are valued by the institution, promote its mission, celebrate its achievements and strengthen its reputation.

##### **High Level**

Attendance counts

##### **Tracking Detail**

Track attendance registration and attendance to better evaluate and categorize the relevance of each event. Track new attendees versus repeat attendees which can influence our outreach to those who are new, or unengaged. Track which events which lead to conversion of volunteerism, life-long learning enrollment, membership, or philanthropy.

#### **VOLUNTEERISM**

Definition: Formally defined activities that offer rewarding volunteer roles and that are endorsed and valued by both PFL and PAA and support the mission and strategic goals for engagement.

##### **High Level**

Track alumni volunteerism that benefits Purdue for Life, PAA and the University

##### **Tracking Detail**

Self-reported activities and hours involved tracked via a website to show areas/topics of high volunteerism and the hours to dollar conversion of what non-financial philanthropy adds to the Institution.

#### **PHILANTHROPIC**

Definition: Diverse opportunities for alumni to make philanthropic investments that are meaningful to the donor and support the institution's mission and strategic goals.

##### **High Level**

Measures all forms of philanthropy; volunteerism, membership and donorship

##### **Tracking Detail**

Detailed tracking of donations, especially by PAA members. Track membership types, length of membership, lapsed membership and overall growth in membership. Detail conversion paths of engaged alumni to member to donor as well as gain by cross promoting memberships (i.e. JPC, PAA and Presidents Council) and use of modeling to predict conversion of alumni segments.

## COMMUNICATION

Definition: Interactive, meaningful and informative communication with alumni that supports the PAA and P4L mission, strategic goals and reputation.

### High Level

Track all digital touch-points of social, email, web and app usage.

### Tracking Detail

Social engagement: Track likes, comments and engagement with website links within posts.

Email engagement: Track opens, clicks, forwards and un-subscribes that lead to conversions of awareness, registrations, volunteerism, memberships and donations. Web engagement: Track web analytics and individual log-ins to portal section of website. Track engagement in Graduway portal.

App engagement: Track engagements of users and which sections of the app are most used. (All tracking eventually pushed to Salesforce and stored with individual's constituent record, including data on personal interests to build a 360-degree view of each constituent.)

### High Level

Track engagement with printed communications; Alumnus magazine, donor solicitations and membership campaigns

### Tracking Detail

Track delivery of the Alumnus in print form and reader surveys. Track campaign engagement by responses on direct mail pieces.

### Priorities:

1. Experiential – attendees and new attendees
2. Communication –
  - Social engagement: Track likes, comments and engagement with website links within posts.
  - Email engagement: Track opens, clicks, forwards and un-subscribes

**MEMORANDUM OF UNDERSTANDING AND  
MUTUAL LICENSE AGREEMENT**

This Memorandum of Understanding and Mutual License Agreement (“Agreement”), is entered into and effective at the close of business on March 31, 2021 (the “Effective Time”), by and between Purdue University, the State of Indiana’s land grant university (“Purdue” or the “University”), and Purdue Alumni Association, Inc., an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PAA”).

**RECITALS**

**WHEREAS**, Purdue has developed and owns and enjoys common law rights in a family of registered and unregistered trademarks and service marks (the “Purdue Marks”) that clearly identify Purdue University as well as goods and services provided by the University in a variety of arenas; and

**WHEREAS**, the Purdue Marks include but are not limited to the marks “Purdue,” “Purdue University®,” “Boilers®,” “Boilermakers®,” and “Purdue Boilermakers®,” as well as certain other word and design marks, including those known generally as the Boilermaker Special marks, the Purdue Pete marks, the Griffin marks, and the slant or motion P marks; and

**WHEREAS**, Purdue has numerous federal trademark registrations for the Purdue Marks, including without limitation, federal trademark registrations for “Purdue University®” (reg. nos. 2367443 and 4497302), “Boilers®” (registration no. 2317737) and “Boilermakers®” (registration nos. 2317738 and 4497301), “Purdue Boilermakers®” (registration nos. 2023046 and 2023047), “Boiler Up” (registration no. 4261915), the Boilermaker Special marks (registration nos.: 4992639, 4497303, 2023046, and 2023047), the Purdue Pete marks (registration nos. 2023048 and 2023049), the Griffin marks (registration nos.: 2023050 and 2023051), and the slant or motion P marks (registration nos. 4497304 and 4992687, and int’l registration no. 1304603); and

**WHEREAS**, the Purdue Marks are strong and distinctive, and they have been widely-recognized as identifying Purdue University for an extended period of time; and

**WHEREAS**, PAA has historically used the name “Purdue,” which is one of the Purdue Trademarks and is sometimes referred to herein as the “Purdue” mark, in connection with PAA’s conduct of business under the name “Purdue Alumni Association”; and

**WHEREAS**, PAA has also historically used certain marks that are Purdue Marks, including without limitation that certain “Block P” mark depicted on Exhibit A (the “Block P Mark”), as well as certain marks that are derivatives of the Purdue Marks, including without

limitation the “Block P” Mark coupled with the words “Purdue Alumni” or “Alumni” as depicted on Exhibit B (the “PAA Derivative Marks”); and

**WHEREAS**, the parties hereto are party to a Joint Plan and Reorganization Agreement, dated of even date herewith (the “Joint Plan”), the key purpose of which is to consolidate in a new entity, Purdue for Life Foundation, LLC, an Indiana limited liability company, or its successor (“P4L”), the University development functions, Alumni Engagement functions (as defined in the Joint Plan), and PAA member services activities that have been historically carried out by PAA, Purdue, or Purdue Research Foundation; and

**WHEREAS**, PAA desires to use the Purdue Marks consistent with past practice as set forth herein in connection with PAA’s ongoing organizational purpose; and

**WHEREAS**, the parties wish to memorialize their agreement with respect to the rights in and the continuing use by PAA of the PAA Derivative Marks.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## **AGREEMENT**

### **1. Mutual License.**

- (a) License to use “Purdue”. Subject to the limitation and requirements set forth herein, Purdue hereby grants to PAA a royalty-free, non-exclusive, non-sublicensable, and nontransferable license to use the “Purdue” mark in connection with PAA’s operation of a nonprofit organization under the name “Purdue Alumni Association.” PAA shall not have the right to use the mark “Purdue” in connection with any other business or in any other manner other than in the conduct of PAA’s Organizational Purpose (as defined below) under the “Purdue Alumni Association” name without Purdue’s prior written consent. Purdue specifically agrees that PAA may continue to maintain its legal corporate name and make all necessary filings with the Indiana Secretary of State. For purposes of clarification, the parties acknowledge and agree that PAA may (i) continue to use the name “Purdue” in its legal corporate name consistent with past practice as long as PAA maintains its corporate existence; and (ii) continue to use the “Purdue” mark and the Block P Mark as part of the PAA Derivative Marks consistent with past practice for the purposes set forth in the PAA Amended and Restated Articles of Incorporation, to wit, to promote the welfare of Purdue University, to encourage the interest of the alumni in the University and in each other, and to select certain of the Trustees of Purdue University in accordance with the statutes of the State of Indiana (“PAA’s Organizational Purpose”); *provided, however*, that nothing in this Agreement shall be construed as permitting PAA, whether during or after the expiration or termination hereof, to use or sub-license the “Purdue” mark or the Block P Mark for an organizational activity that is outside of the PAA Organizational Purpose.

- (b) License to use Purdue Marks. The parties hereto acknowledge and agree that the “Block P” Mark is and has been a Purdue Mark and that Purdue owns all right, title and interest in and to such mark as well as other Purdue Marks that may be incorporated into the PAA Derivative Marks. Subject to the limitations and requirements set forth herein, Purdue hereby grants to PAA a royalty-free, non-exclusive, non-sublicensable and nontransferable license to use the “Block P” Mark as well as other underlying Purdue Marks that may be incorporated into the PAA Derivative Marks depicted on Exhibit B in connection with PAA’s Organizational Purpose. PAA shall not have the right to use the “Block P” Mark or any other underlying Purdue Marks that may be incorporated into the PAA Derivative Marks in connection with any other business or in any other manner without Purdue’s prior written consent. PAA shall not, from and after the date of this Agreement, develop or use any marks that are derivatives of the Purdue Marks without Purdue’s prior written consent.
- (c) License from PAA to Purdue for PAA Derivative Marks. PAA hereby grants to Purdue a royalty-free, non-exclusive and nontransferable license to use the PAA Derivative Marks as they are in existence as of the Effective Time in connection with Purdue’s business or the business of any affiliate of Purdue. Purdue shall not have the right to use the PAA Derivative Marks in connection with any other business or in any other manner without PAA’s prior written consent. Any and all goodwill associated with or identified by the PAA Derivative Marks shall inure directly and exclusively to and become the property of PAA. Purdue agrees to comply with any brand or similar guidelines furnished to it when using the PAA Derivative Marks.
- (d) Consent to License to Purdue for Life Foundation, LLC. Purdue specifically agrees and consents to PAA’s licensing to P4L, pursuant to that certain License Agreement between PAA and P4L of even date herewith, of certain “Licensed Property” (as that term is defined in such License Agreement).
- (e) Third-Party Royalty Payments. The licenses granted from Purdue to PAA are royalty-free (as between the parties themselves) only to the extent that they involve PAA’s direct permitted uses hereunder and do not involve the procurement by PAA of licensed goods or services using the “Purdue” mark or the PAA Derivative Marks from third parties, including approved Purdue licensees. PAA agrees that it shall not procure any goods or services using the mark “Purdue” or the PAA Derivative Marks as permitted hereunder from any third party who is not an approved Purdue licensee. PAA further acknowledges and agrees that PAA shall be obligated to pay applicable royalty fees for any such orders placed by PAA with approved Purdue licensees. Generally, PAA shall continue to order and obtain any apparel or other products that bear or incorporate Purdue Marks through the product licensing program maintained by Purdue’s Office of Trademarks and Licensing; *provided, however*, that this general practice shall not limit PAA’s ability from time to time

to procure independently a *de minimis* number of items of logowear bearing PAA Derivative Marks for its board members or other internal users.

2. Ownership of the Purdue Marks and Intellectual Property. PAA recognizes and acknowledges that Purdue is the sole and exclusive owner of all right, title, and interest in and to the Purdue Marks together with certain other registered and unregistered trademarks, service marks, trade names, and certain registered trademarks, service marks, and pending applications therefor which may incorporate the Purdue Marks (hereinafter referred to collectively as “Intellectual Property Rights”). PAA agrees that it will not register or attempt to register the mark “Purdue Alumni Association,” the Intellectual Property Rights, or a related trademark or service mark in its own name or the name of any other entity. PAA further agrees that it will not, at any time, do or cause to be done any act or thing that in any way impairs or tends to impair any part of Purdue’s right, title, and interest in and to the Purdue Marks and Intellectual Property Rights. PAA shall not use the mark “Purdue” except as authorized by this Agreement and shall cause any advertising incorporating the Purdue Marks, or other uses of the Purdue Marks pursuant to the license granted herein, to bear the proper legal notice with respect to the Purdue Marks. PAA also agrees to comply with Purdue’s instructions regarding product or service marking or advertising. Generally, marking and use of the Purdue Marks shall be subject to Purdue’s prior written approval. For purposes of clarification, PAA may continue using the “Purdue” mark and the Block P Mark as part of the PAA Derivative Marks consistent with past practice as set forth in Section 1(a) hereof, subject to the proviso set forth at the end of such Section 1(a). Nothing contained in this Agreement shall be construed to vest in PAA any right, title, or interest in or to the Purdue Marks or Intellectual Property Rights and the goodwill associated therewith other than the limited rights expressly granted in this Agreement. Any and all goodwill associated with or identified by the Purdue Marks or Intellectual Property Rights shall inure directly and exclusively to and become the property of Purdue.
3. PAA Shall Not Contest Validity. PAA shall not at any time, directly or indirectly, contest or aid in contesting the validity or ownership of the Purdue Marks or Intellectual Property Rights or take any action whatsoever in derogation of Purdue’s rights therein.
4. Transfer, Assignment, Sublicense. PAA shall not under any circumstances encumber, pledge, assign, sublicense, or in any manner transfer all or any part of the limited license granted herein without the prior written consent of Purdue, however, Purdue expressly consents to PAA’s grant of the license contemplated by Section 1(d) of this Agreement.
5. Term of License. This Agreement shall be in effect from the Effective Date until the date that Purdue provides PAA with at least thirty (30) days prior written notice of termination of this Agreement, which notice Purdue may give at any time and in its sole and absolute discretion. PAA shall not at any time after any termination of this Agreement use the Purdue Marks, or any marks confusingly similar thereto; *provided, however*, that, subject to the proviso set forth at the end of Section 1(a) hereof, PAA may continue using the “Purdue” mark in its legal corporate name and, consistent with past practice, may continue using the “Purdue” mark and the Block P Mark as part of the PAA Derivative Marks in connection with the conduct of PAA’s Organizational Purpose, the PAA Retained Alumni Engagement Activity, and the Shared Alumni Engagement Activity, as more particularly described in Section 7 below.

6. Termination of Joint Plan. The termination of the Joint Plan will not automatically terminate this Agreement. Should the Joint Plan be terminated, the parties agree that the equitable arrangement to return PAA to such state as it existed as of the Effective Time to the extent practicable, as provided in Section 12(c) of the Joint Plan, shall include, consistent with past practice, PAA's ongoing use of the name "Purdue" in its legal corporate name and its ongoing use of the "Purdue" mark and the Block P Mark as part of the PAA Derivative Marks in connection with the conduct of PAA's Organizational Purpose, the PAA Residual Alumni Engagement Activity, and the Shared Alumni Engagement Activity, as more particularly described in Section 7 below.
7. Effect of Termination of License or Joint Plan. Upon termination of this Agreement by Purdue pursuant to Section 5 above or upon termination of the Joint Plan by either P4L or PAA pursuant to Section 12(a) thereof (other than pursuant to a P4L insolvency event described in clause (A) of Section 12(a)(ii) thereof), the process described in this Section 7 will govern.
  - (a) The parties to the Joint Plan (including Purdue) shall, consistent with Section 12(c) to the Joint Plan, negotiate in good faith to devise an equitable arrangement to return PAA to such state (as to the use of the PAA Derivative Marks) as it existed as of the Effective Time to the extent practicable. To facilitate that process, and irrespective of whether any termination of the Joint Plan has already occurred at such time, such parties (including Purdue) will invoke and collaborate in good faith under the first two steps (Negotiation and Mediation) of the ADR Mechanism set forth in the Joint Plan to determine: (i) which activities and functions related to Alumni Engagement will continue to be performed following termination by P4L, and (ii) which activities and functions related to Alumni Engagement will be shared in cooperation between P4L and PAA (the "Shared Alumni Engagement Activity"), it being understood and agreed that PAA will have a right and license to use the PAA Derivative Marks following termination for Alumni Engagement activities and functions consistent with PAA's Organizational Purpose (the "PAA Retained Alumni Engagement Activities"), as well as for Shared Alumni Engagement Activity.
  - (b) The parties will, in the course of the above-described process, negotiate in good faith to reach mutual agreement on a new written instrument (which may but need not be an amendment and restatement of this Agreement) setting forth the terms and conditions of PAA's right and license to use the "Purdue" mark and the Block P Mark as part of the PAA Derivative Marks in connection with the conduct of PAA's Organizational Purpose, the PAA Retained Alumni Engagement Activity, and the Shared Alumni Engagement Activity going forward.
8. Quality. The nature and quality of all services rendered by PAA in connection with the Purdue Marks and all related promotional, marketing and other uses by PAA, as may be permitted under this License, shall comply with all applicable federal, state, and local laws and shall conform to Purdue's standards. Except as expressly provided herein, this Agreement does not authorize the use of Purdue Marks, the Intellectual Property Rights, or any adaptation thereof in any advertising, promotional or sales activities, without the express prior written consent of



Purdue. PAA further agrees that the use of the Purdue Marks in connection with any advertising is subject to Purdue's prior written approval. PAA shall comply with Purdue's reasonable instructions regarding advertising. Without limiting the foregoing, any written description of PAA's historical and ongoing relationship with Purdue, including without limitation on PAA's website, shall be subject to Purdue's prior approval, which shall not be unreasonably withheld.

9. Unauthorized Use of Trade Name by Others. PAA shall promptly notify Purdue in writing of any unauthorized use by others of the Purdue Marks, or any colorable limitation thereof, and shall inform Purdue of the circumstances regarding such unauthorized use. Purdue shall have the sole right and discretion to institute actions for infringement and/or unfair competition against such parties, and to take any other actions necessary to terminate such unauthorized use. PAA hereby authorizes Purdue to add PAA as a party plaintiff to any action which PAA brought to Purdue's attention, if deemed necessary or desirable by Purdue's counsel. Prosecution of such actions shall be at Purdue's sole expense, and all recoveries in such actions shall be retained solely by Purdue. PAA shall, at its own expense, have the right to retain its own counsel in connection with any such action.
10. Claims or Demands Upon PAA. PAA shall promptly notify Purdue in the event any claim or demand is made upon PAA based upon the use of the Purdue Marks. In the event Purdue undertakes a defense or prosecution of any litigation in relation to the Purdue Marks, PAA shall execute such documents and provide such reasonable assistance as shall, in the reasonable opinion of Purdue's counsel, be necessary in the defense or prosecution of such litigation. Purdue is not required to undertake such a defense or prosecution. Notwithstanding anything to the contrary, Purdue shall not settle any claim or demand without PAA's written consent if such settlement would subject PAA to any obligations or liability.
11. Miscellaneous.
  - (a) No Joint Venture/Agency. Nothing contained herein shall be construed to place the parties in the relationship of partners, joint venturers, franchisor and franchisee, or principal and agent.
  - (b) Entire Agreement. This Agreement (including the exhibit hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement (including the exhibit hereto) supersedes all prior agreements and understandings and representations and warranties between the parties with respect to the subject matter hereof.
  - (c) No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto, and nothing herein express or implied will give or be construed to give any person or entity other than the parties hereto any legal or equitable rights hereunder.
  - (d) Waiver. The failure by either party to exercise any right under this Agreement on one occasion will not waive its right to exercise the same right on another occasion.

- (e) Changes. No modification, verification or amendment of this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by the parties hereto.
- (f) Applicable Law. The parties stipulate that this Agreement has been entered into in Indiana and is governed by the substantive laws of Indiana without reference to its choice of law principles.
- (g) Courts. Courts in Tippecanoe County, Indiana with subject matter jurisdiction shall have sole and exclusive jurisdiction and venue over all disputes arising under or in connection with this Agreement or its breach. The parties hereby (i) submit to the exclusive jurisdiction and venue of said courts with respect to any such dispute, and (ii) waive any defense or claim that said courts do not represent the preferred venue, lack personal jurisdiction over either party, or are inconvenient for the parties or witnesses.
- (h) Severability. If any provision of this Agreement is ruled to be invalid, such ruling will not affect any other provision which can be given effect without the invalid provision. Any ruling that a particular provision is invalid in one circumstance or application shall not preclude such provision from being enforced in any other circumstance or application if the provision would be valid in such other circumstance or application.
- (i) Inferences. This Agreement has been freely negotiated by the parties. No inference shall be drawn against either party based on which party drafted any provision in this Agreement.
- (j) Notices. All notices shall be in writing and shall be delivered personally or sent by certified or express mail, postage prepaid as follows:

If to Purdue: Purdue University Office of Legal Counsel  
Hovde Hall of Administration  
610 Purdue Mall  
West Lafayette, IN 47907-2040

If to PAA: Purdue Alumni Association, Inc.  
Dick and Sandy Dauch Alumni Center  
Attention: Dan Dawes, Chairman of the Board  
403 W Wood St  
West Lafayette, IN 47907-2007

*[Signatures appear on following page]*

*[Signature Page to Memorandum of Understanding and Mutual License Agreement]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**THE PURDUE ALUMNI ASSOCIATION, INC.**

By: \_\_\_\_\_  
Daniel Dawes, Chairman

**PURDUE UNIVERSITY**

By: \_\_\_\_\_  
Mitchell E. Daniels, Jr., President

**EXHIBIT A**  
**BLOCK P MARK**



**EXHIBIT B**  
**PAA Derivative Marks**



## LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into and effective at the close of business on March 31, 2021 (the “Effective Time”), by and between Purdue Alumni Association, Inc., an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PAA”), and Purdue for Life Foundation, LLC, an Indiana nonprofit limited liability company (“P4L”).

### RECITALS

**WHEREAS**, PAA and P4L, along with Purdue Research Foundation and Purdue University, are parties to that certain Joint Plan and Reorganization Agreement (the “Joint Plan”), of even date herewith; and

**WHEREAS**, PAA and P4L are parties to that certain Services and Meeting Space Agreement (the “Services Agreement”), of even date herewith; and

**WHEREAS**, pursuant to the Joint Plan and the Services Agreement, PAA has engaged P4L to provide various services in support of PAA’s Core Functions and Alumni Engagement mission (as such terms are defined in the Joint Plan); and

**WHEREAS**, PAA has historically used the name “Purdue,” which is a trademark owned by Purdue University, in connection with PAA’s conduct of business under the name “Purdue Alumni Association”; and

**WHEREAS**, PAA has also historically used certain other marks that, although owned by Purdue University, have been widely recognized as identifying PAA for an extended period of time; and

**WHEREAS**, these marks include that certain “Block P” mark depicted on Exhibit A (the “Block P Mark”), as well as certain marks that are derivatives of the “Block P” mark, including the “Block P” Mark coupled with the words “Purdue Alumni” or “Alumni” as depicted on Exhibit B (the “Licensed Property”); and

**WHEREAS**, pursuant to the Joint Plan, PAA desires to license to P4L the Licensed Property so that P4L can use the Licensed Property when carrying out activities on PAA’s behalf in support of PAA’s Alumni Engagement mission as contemplated in the Joint Plan and the Services Agreement; and

**WHEREAS**, P4L similarly desires the right to use the Licensed Property in connection with P4L’s conduct of its business, so that P4L can carry out activities on PAA’s behalf in support of PAA’s Alumni Engagement mission as contemplated in the Joint Plan and the Services Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained in the Joint Plan and herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

## AGREEMENT

1. License. PAA hereby grants to P4L a royalty-free, non-exclusive and nontransferable license to the Licensed Property in connection with P4L's operations, including Alumni Engagement, as that term is defined in the Joint Plan.
2. Term of License. This Agreement shall be in effect from the Effective Date until termination by mutual agreement of PAA and P4L, or until termination of the Joint Plan. P4L shall not at any time after any termination of this Agreement use the Licensed Property, except to the extent such use is provided for in a new written instrument entered into pursuant to Section 7(b) of that certain Memorandum of Understanding and Mutual License Agreement between Purdue University and PAA of even date herewith.
3. Extent of License. The license granted herein shall not be transferable without PAA's prior written consent.
4. Ownership of Licensed Property. P4L acknowledges that PAA is the original licensee of Purdue University with respect to the Licensed Property, such that PAA has a sub-licenseable license to the Licensed Property sufficient for PAA to grant the license to P4L per the terms of this Agreement, and P4L will not, at any time, do or cause to be done any act or thing that in any way impairs or tends to impair any part of such license held by PAA. P4L agrees to comply with any brand or similar guidelines furnished to it by PAA when using the Licensed Property. Any and all goodwill associated with or identified by the Licensed Property shall inure directly and exclusively to the benefit of PAA as the original licensee or Purdue University as the trademark owner.
5. Miscellaneous. This Agreement (including the exhibit hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement (including the exhibit hereto) supersedes all prior agreements and understandings and representations and warranties between the parties with respect to the subject matter hereof. No modification, verification or amendment of this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by the parties hereto. The parties stipulate that this Agreement has been entered into in Indiana and is governed by the substantive laws of Indiana without reference to its choice of law principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

THE PURDUE ALUMNI ASSOCIATION, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

PURDUE FOR LIFE FOUNDATION, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT A  
Licensed Property



**AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
PURDUE FOR LIFE FOUNDATION, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this “Agreement”) is signed as of the 31st day of March, 2021 by the undersigned as the sole Member of **PURDUE FOR LIFE FOUNDATION, LLC**, an Indiana limited liability company (the “Company”), to govern certain aspects of the operations of the Company and to state the rights and obligations of the Member, all other persons who may become Members in accordance with the terms of this Agreement, and their respective successors and assigns, and it amends and restates that certain Operating Agreement of the Company originally signed by its sole Member as of July 31, 2020.

**Article I.  
The Company**

1.1 **Formation.** The Company was formed under the laws of the State of Indiana by filing Articles of Organization (the “Articles”) with the Indiana Secretary of State under the Indiana Business Flexibility Act (I.C. §§ 23-18-1-1, et seq.) as amended from time to time (the “Act”) on behalf of Purdue Research Foundation, the sole member. Purdue Research Foundation as sole Member of the Company adopts this Agreement to govern certain aspects of the operations of the Company and to set forth the rights and obligations of the initial Member and all persons subsequently becoming Members, and their respective successors and assigns.

1.2 **Income Taxation.** For purposes of federal and state income taxation, the Members intend that the Company not be treated as an association but rather as a partnership or disregarded entity (as may be appropriate) and this Agreement shall be construed accordingly.

1.3 **Term of Existence.** The term of the Company’s existence commenced on the date of filing of the Company’s Articles of Organization and shall continue in perpetuity and until the Company is dissolved in accordance with the Act or this Agreement, as amended from time to time hereafter.

1.4 **Principal Place of Business.** The principal place of business of the Company is Dick and Sandy Dauch Alumni Center, 403 W. Wood Street, West Lafayette, Indiana 47907-2007, or at any other place that the Members select.

1.5 **Registered Office and Registered Agent.** The address of the Company’s registered office is Hovde Hall, Room 230, 610 Purdue Mall, West Lafayette, Indiana 47907-2040. The name of the Company’s registered agent at that office is Jonas Q. Burgett.

## **Article II. Purposes**

The Company shall be operated exclusively for educational, charitable, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future United States internal revenue law), including all of those activities for which Purdue Research Foundation is authorized and which are in furtherance of the tax-exempt purposes of Purdue University and Purdue Research Foundation. Subject to the foregoing and any other restrictions in this Agreement, the Company may engage in any and all lawful business and activities for which limited liability companies may be organized under the Act.

The Company intends to further the foregoing charitable purposes by serving as a vehicle for the strategic coordination of all outward-facing Purdue University alumni engagement, alumni member services, fundraising and stewardship efforts of organizations within the Purdue ecosystem that have historically had a role in such activities, with the goal of (a) continuing the mission of the Purdue Alumni Association, (b) reducing redundancy and creating flexibility in the cultivation and management of donor and alumni relationships and records, (c) more closely unifying and aligning university development and alumni engagement and membership services functions, (d) more effectively allocating personnel in support of the foregoing efforts, and (e) achieving efficiencies and cost savings in the management and oversight of investment accounts.

## **Article III. Restrictions**

3.1 **General Restrictions.** Notwithstanding any other provisions of this Operating Agreement, the Company must not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or by an organization to which contributions are deductible under Sections 170(b)(1)(A) or (B) and 170(c)(2) of the Internal Revenue Code (or the corresponding provisions of any future United States internal revenue law).

3.2 **No Substantial Lobbying.** No substantial part of the activities of the Company may be the carrying on of propaganda, or otherwise attempting to influence legislation, provided that if the Company or a Member of the Company may and does make the election provided in Section 501(h) of the Internal Revenue Code (or the corresponding provisions of any future United States internal revenue law), the Company thereafter may engage in such activities to the extent it is permitted to do so under that section without destroying the exemption of any of its Members from taxation under Section 501(a) of the Internal Revenue Code.

3.3 **No Political Campaigning.** The Company may not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

3.4 **No Private Inurement.** No part of the net earnings or property of the Company may inure to the benefit of, or be distributable to, its Members, managers, trustees, officers, or other private persons, other than any person qualified as exempt from federal income tax under

Section 501(c)(3) of the Code (or the corresponding provisions of any future United States internal revenue law); except that the Company is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II of this Operating Agreement.

3.5 **Irrevocable Dedications.** The income and assets of the Company are irrevocably dedicated to its exempt purposes as described in Article II; subject, however, to Section 12(c) of the Joint Plan and Reorganization Agreement among PAA, PRF, Purdue University and the Company dated as of March 31, 2021 (the “Joint Plan”) describing the definitive plan of reorganization and collaboration pursuant to which Purdue University’s three alumni facing organizations will create strategic coordination of all outward-facing engagement, alumni member services, fundraising and stewardship efforts and further develop Purdue University’s brand and present a unified *One Purdue*.

3.6 **Contingent Restrictions.** In the event that any Member of the Company is determined by the Internal Revenue Service to be a private foundation within the meaning of Section 509 of the Internal Revenue Code (or the corresponding provisions of any future United States internal revenue law), and only during the period during which such determination applies, notwithstanding any other provision of this Operating Agreement, this Section 3.6 of Article III will apply and the Company shall: (1) not engage in any act of “self-dealing” (as defined in Section 4941(d) of the Internal Revenue Code) that would subject any Member of the Company to tax under Section 4941 of the Internal Revenue Code; (2) distribute its income for each taxable year for the purposes specified in Article II of this Operating Agreement at such time, in such manner, and in such amounts as are necessary to avoid subjecting any Member of the Company to tax under Section 4942 of the Internal Revenue Code; (3) not retain any “excess business holding” (as defined in Section 4943(c) of the Internal Revenue Code) that would subject any Member of the Company to tax under Section 4943 of the Internal Revenue Code; (4) not make any investments that would jeopardize the carrying out of any exempt purposes of any Member of the Company (within the meaning of Section 4944 of the Internal Revenue Code) and thereby subject the Member to tax under Section 4944 of the Internal Revenue Code; and (5) not make any “taxable expenditures” (as defined in Section 4945(d) of the Internal Revenue Code) that would subject any Member of the Company to tax under Section 4945 of the Internal Revenue Code.

## **Article IV. Members**

4.1 **Members.** The Company has one Member (a “Member” or “Members”): Purdue Research Foundation, an Indiana corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (“PRF”). Unless otherwise determined by vote of the Members, Membership Units shall be uncertificated.

4.2 **Limitation of Liability.** No Member of the Company will be personally liable, directly or indirectly, for the debts, obligations or liabilities of (or chargeable to) the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other Member, Manager, officer, agent or employee of the Company.

4.3 **Waiver of Partition.** Each Member on behalf of that Member and the heirs, successors and assigns of that Member waives any rights to have any Company property partitioned.

4.4 **Withdrawal.** A Member may not withdraw from the Company or withdraw any portion of the capital contributed to the Company by that Member unless the withdrawing Member complies with all applicable provisions of this Agreement concerning transfers of Membership Units.

4.5 **Reimbursement of Expenses.** No Member shall be under any obligation to financially underwrite or subsidize the Company's operations following the Member's initial contribution. Absent unanimous approval of the Managers, no Member shall incur expenses on behalf of the Company (other than for services rendered pursuant to contract) or be entitled to reimbursement from the Company of expenses incurred by the Member on behalf of the Company

4.6 **Voting and Meetings.** Pursuant to Indiana Code Section 23-18-4-5(1), the Company shall be managed, controlled, and operated exclusively by its Managers. The Company shall not have Members' meetings. To the extent that action of the Members is required by law, any action required or permitted to be taken by the Members may be taken without a meeting if all Members consent in writing to authorize such action.

4.7 **Transfer of Membership Interest.** A Member shall have no right to transfer its membership interest in the Company to a third person or party without permission by unanimous vote of the Managers, which permission may be granted or withheld in each such Manager's sole discretion.

## **Article V. Management**

5.1 **Management Board.** The business and affairs of the Company shall be managed under the direction and control of five (5) individual Managers (called "Managers") who shall constitute a board of Managers (the "Board").

5.2 **Designation of Managers.** The Managers shall be (a) the President of Purdue University, (b) three Managers appointed and removable by the Board of Trustees of the Trustees of Purdue University, at least one of whom must be a Purdue trustee selected through the PAA election process, and (c) one Manager (the "PAA Manager") appointed and removable by the Executive Committee of Purdue Alumni Association, Inc. ("PAA"), as provided in the Joint Plan.

5.2.1 Should the Joint Plan be terminated for any reason, then, on the effective date of such termination, the following will occur: (i) the Manager appointed by PAA's Executive Committee shall be automatically removed as a Manager of the Company, (ii) PAA and its Executive Committee shall thereafter have no further right to appoint a Manager of the Company, and (iii) such vacancy in the Board shall thereafter be appointed and removed by The Trustees of Purdue University.

5.2.2 Should the parties to the Joint Plan establish a new nonprofit corporation

(“NewCo”) to serve as the successor to the Company in accordance with the terms of the Joint Plan, then, on the effective date of a transaction that results in NewCo’s becoming the successor to the Company, the following will occur: (i) the Manager appointed by PAA’s Executive Committee shall be automatically removed as a Manager of the Company (it being understood that PAA will continue to be represented by its designee on NewCo’s board in accordance with the terms of the Joint Plan), (ii) PAA and its Executive Committee shall thereafter have no further right to appoint a Manager of the Company, and (iii) such vacancy in the Board of the Company shall thereafter be appointed and removed by The Trustees of Purdue University. For the avoidance of doubt, the Member acknowledges and agrees that, upon the occurrence of the event described in the first sentence of this Section 5.2.2, the Board structure set forth in this Agreement and the provisions of this Article V will be replicated in NewCo’s by-laws and other organizational documents and definitive agreements. Without limiting the previous sentence, the NewCo board will have five (5) members of its board of directors, and one of those directors will be the PAA Manager.

5.2.3 The Managers who are appointed by The Trustees of Purdue University (the “Purdue Managers”) and the PAA Manager shall each serve a two-year term until the meetings of their respective appointing bodies held every two years for the purpose of making such appointment. Each such Manager shall serve his or her term and until his or her successor has been duly appointed and qualified. The Purdue Managers and the PAA Manager may be reappointed. The Manager who serves by virtue of his or her position as President of Purdue University shall serve as a Manager as long as he or she holds the office of President of Purdue University.

5.3 **Management Board Decision Binds Company.** All powers of the Company shall be exercised by or under the authority of the Board. Decisions of the Board within its scope of authority shall be binding upon the Company and the Member. As previously stated in Section 4.6 above, the Member(s) shall have no authority to appoint Managers or to govern or conduct the business and affairs of the Company, nor shall it/they interfere with the Board’s authority to do so. Unless prohibited by applicable law and except for approvals required by Section 5.4.10, if the Member(s) are required to do anything related to the Company, the Member(s) will take their direction from the Board.

#### 5.4. **Meetings.**

5.4.1 ***Annual Meetings.*** The annual meeting of the Board shall be held within three months of the end of each fiscal year of the Company for the purpose of electing Board Officers, approving the Company’s annual operating budget, and conducting any other business that may be properly brought before the meeting.

5.4.2 ***Regular Meetings.*** The Board shall have at least one regular meeting per year in addition to the annual meeting, at such times as the Board may from time to time designate, and at the Company’s principal office unless another location is specified.

5.4.3 ***Special Meetings.*** The Chairperson or the Vice Chairperson (as those Board Officers are described and selected pursuant to Section 5.10 below), or any two Board members may call special meetings of the Board. Such meetings shall be held at such time as is

designated in the notice given with respect to such meetings, and shall be held at the Company's principal office unless another location is specified in the notice. No business other than that stated in the notice or call of a special meeting shall be transacted at such meeting.

**5.4.4 Notices.** Notice of each annual and regular meeting of the Board shall be given to each Manager personally, by telephone, by facsimile, or by email at least thirty (30) days before such meeting. Notice of each special meeting of the Board, including the purpose thereof, shall be given to each Manager personally, by telephone, by facsimile, or by email at least two days before such meeting. A requirement for receiving notice at any meeting may be waived in writing by a Manager before, during, or following a meeting. Attendance at a meeting shall constitute a waiver of the requirement of receiving notice of the meeting.

**5.4.5 Quorum; Voting.** At any meeting of the Board, three (3) Managers shall constitute a quorum for the transaction of any business; *provided, however*, that to the extent such a meeting contemplates action on business requiring approval by the PAA Manager under Sections 5.4.8 and 5.4.9 of this Agreement, such business shall be tabled until such time as the PAA Manager may constitute part of the quorum. Subject to the following sentence, no business shall be conducted by the Board at any meeting at which a quorum is not present, and the only motion which the Chairperson shall entertain at such meeting is a motion to adjourn. If an emergency or other extraordinary event prevents the Board from garnering a quorum, there shall be no quorum requirement, and the majority vote of all Managers available and able to vote shall constitute an action of the Board as long as the action is taken in good faith and is approved by the majority of Managers at the next regular meeting at which a quorum is present, it being understood, consistent with the proviso in the first sentence of this Section 5.4.5, that no such action may be taken on any business requiring approval by the PAA Manager. This Section 5.4.5 shall not reduce the number of Managers needed to satisfy provisions in sections 5.4.8 and 5.4.9 below requiring the affirmative vote of a specified number of Managers to approve certain matters. Except as specifically provided otherwise in this Agreement, all actions to be taken by the Board at a meeting shall require the vote of a majority of a quorum.

**5.4.6 Participation.** A Manager may attend a Board meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. A Manager participating by this means is considered to be present in person at the meeting.

**5.4.7 Conduct of Meetings.** Meetings of the Board shall be presided over by the Chairperson, or in his or her absence, by the Vice Chairperson, or, in the absence of each of these persons, by a Manager chosen by a majority of the Managers present at the meeting to act as Chairperson. The Secretary shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary. Meetings shall be governed by Roberts Rules of Order, insofar as such rules are not inconsistent with or in conflict with the Company's Certificate of Organization, this Agreement, or with provisions of law.

**5.4.8 Action Requiring Approval of All Managers.** The following actions by the Board shall require the unanimous vote of the Managers:

- 5.4.8.1 A transfer of a Member's membership interest in the Company pursuant to Section 4.7 of this Agreement, or a withdrawal of a Member's contributed capital in the Company;
- 5.4.8.2 A Member incurring expenses or becoming entitled to reimbursement of expenses incurred on behalf of the Company pursuant to Section 4.5 of this Agreement;
- 5.4.8.3 An increase in the number of Managers on the Board;
- 5.4.8.4 Any amendment to this Agreement that would curtail the authority of the Board or that would change the Company's governance structure (including, for example, by the creation of an executive committee without including a PAA representative on such committee, together with a delegation of any of the Board's powers to such executive committee); and
- 5.4.8.5 A resolution to dissolve the Company.

5.4.9. ***Action Requiring Approval of PAA Manager.*** The Board shall select the CEO of the Company by majority vote, which majority must include the PAA Manager.

5.4.10 ***Action Requiring Approval of the Member.*** The following actions shall require the approval of the Member(s):

- 5.4.10.1 A resolution in favor of the withdrawal of a Member's contributed capital in the Company;
- 5.4.10.2 A resolution in favor of dissolution of the Company; and
- 5.4.10.3 A resolution in favor of a cash investment by the Company in an investment opportunity that may personally benefit a Manager.

## 5.5 **Committees.**

5.5.1 ***Creation of Committees.*** The Board may from time to time appoint committees, which each shall include at least one Manager and may include persons who are not Managers. Each such committee shall have such power and authority as is delegated to it by the Board, subject to (a) such limitations as may be imposed by law, (b) the limitation that such committees shall not have independent decision-making power and shall only have the power to make recommendations to the Board, and (c) the limitations set forth in Section 5.4.8.4.

5.5.2 ***Committee Procedures.*** A majority of members of a committee shall constitute a quorum for the transaction of business at any committee meeting. All actions to be taken by a committee at a meeting shall require the vote of a majority of a quorum. A member of a committee may attend a meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. A member participating by this means is considered to be present in person at the meeting. Each committee



shall keep minutes of its meetings, and shall cause them to be reported to the Board at or prior to the next meeting of the Board. Each committee may adopt other rules and procedures pertaining to the conduct of meetings which are not inconsistent with this Agreement.

5.6 **Actions Without Meetings.** Actions by the Board or any Board committee may be taken without meetings as permitted by and in accordance with the requirements of the law of Indiana.

5.7 **Compensation.** Managers shall serve without compensation. The Company may advance or reimburse reasonable expenses to Managers for meetings or events for which attendance by one or more Managers may be requested in performance of his, her or their duties.

5.8 **Managers Not Personally Liable.** Managers shall not be personally liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any Member, other manager, agent or employee of the Company. A Manager shall perform the Manager's duties as a manager in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager is not liable for any action taken as a manager, or any failure to take any action, unless the Manager has breached or failed to perform the Manager's duties and the breach or failure to perform constitutes willful misconduct or recklessness.

5.9 **Unauthorized Manager Actions.** Any Manager who takes any action or binds the Company in violation of this Article V or any other provisions of this Agreement shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.10 **Board Officers.**

5.10.1 ***Board Offices.*** The "Board Offices" of the Board shall be Chairperson, Vice Chairperson, Secretary, Treasurer, and such other offices with such titles as may be established from time to time by the Board. A person holding a Board Office shall be a "Board Officer." Only Managers may serve as Chairperson or Vice Chairperson. The other Board Officers need not be Managers. Board Officers may be reappointed or reelected.

5.10.2 ***Appointment or Election; Term.***

5.10.2.1 At each annual meeting of Managers, the Managers shall elect a Manager to serve as the Chairperson during the year then beginning (or until the end of such Manager's term as Manager, if not reappointed as a Manager).

5.10.2.2 At each annual meeting of Managers, the Managers shall elect a Manager to serve as the Vice Chairperson during the year then beginning (or until the end of such Manager's term as Manager, if not reappointed as a Manager).

5.10.2.3 All other Board Officers shall be elected by the Managers at each annual meeting.

5.10.2.4 The term of Board Officers shall be one year and shall continue until resignation, removal, or the next annual meeting of Managers, and until their successors are duly appointed or elected and qualified.

5.10.3 ***Removal and Replacement.*** Any Board Officer may at any time be removed, with or without cause by the other Managers on the Board; *provided, however*, that any such removal shall not affect the individuals continued service on the Board if he or she is a Purdue Manager or a PAA Manager pursuant to Section 5.2. Upon such removal as a Board Officer, he or she shall be replaced by a majority of a quorum of the Managers. Any Board Officer who is elected as a replacement Board Officer under this Section 5.10.3 shall hold office until the next annual meeting of the Board and until a successor is duly elected and qualified.

5.10.4 ***Other Vacancies.*** A Board Officer who resigns or is no longer able to serve shall be replaced pursuant to the provisions of Section 5.10.3 above regarding the replacement of Board Officers who have been removed, and any officer so elected shall hold office until the next annual meeting of the Board and until a successor is duly elected and qualified.

5.10.5 ***Duties.***

5.10.5.1 ***Chairperson.*** The Chairperson shall perform all duties incident to his or her office and such other duties as may be required by law, by the Certificate of Organization, or by this Agreement, or which may be prescribed from time to time by the Board. Except to the extent delegated to another Manager by Board resolution or in any employment contract between the Company and a Manager or officer, the Chairperson shall execute such deeds, mortgages, bonds, contracts, checks, or other instruments in the name of the Company which may from time to time be authorized by the Board.

5.10.5.2 ***Vice Chairperson.*** In the absence of the Chairperson, or in the event of the Chairperson's inability or refusal to act, the Vice Chairperson shall perform all the duties of the Chairperson, and when so acting shall have all the powers of, and be subject to all the restrictions on, the Chairperson.

5.10.5.3 ***Secretary.*** The Secretary shall attend all Board meetings and committee meetings, and shall keep a true and complete record of the proceedings of such meetings. If required, the Secretary shall attest the execution by the Company of deeds, leases, agreements, and other official documents and shall attend to the giving and serving of all notices of the Company required by this Agreement or applicable law, shall have custody of the books (except books of account) and records of the Company, and in general shall perform all duties pertaining to the office of Secretary and such other duties as this Agreement or the Board may prescribe.

5.10.5.4 ***Treasurer.*** The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Company. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Company and shall deposit, or cause to be deposited, all funds of the Company with such depositaries as the Board. The Treasurer shall furnish at meetings of the Board, or whenever requested, a statement of the financial condition of the Company, and in general shall perform all duties pertaining to the office

of Treasurer and such other duties as this Agreement or the Board may prescribe.

5.10.6 ***Other Officers.*** All other officers shall have such powers and perform such duties as are delegated to them by the Board.

## **Article VI. Accounting and Membership Units**

6.1 **Accounting.** The Company's books of account shall be kept and the Company's profits and losses shall be computed following generally accepted accounting practices applied on a consistent basis, on a cash or accrual basis as approved by vote of the Managers from time to time.

6.2 **Access to Accounting Records.** Each Manager and their duly authorized representatives have the right, at the Company's expense, to inspect and copy the Company's accounting records at the Company's principal office, upon reasonable request and for a proper purpose, during ordinary business hours.

## **Article VII. Dissolution and Termination**

7.1 **Dissolution.** The Company shall be dissolved and its affairs wound up only when the first of the following occurs:

1. A resolution by the Managers in favor of dissolution of the Company in accordance with Section 5.4.8.5, followed by approval of the Member(s) in accordance with Section 5.4.10.2; or
2. The entry of a decree of judicial dissolution under the Act.

The occurrence of an "event of dissociation" (as defined in the Act) with respect to a Member shall not result in the Company's dissolution, and the existence of and conduct of business by the Company shall continue without interruption following any such occurrence.

7.2 **Final Accounting.** If the Company is dissolved, a proper accounting shall be made from the date of the last previous accounting to the date of dissolution.

7.3 **Liquidation.** Upon the Company's dissolution, the Company may not carry on activities except those appropriate to wind up and liquidate the Company's affairs. The Board shall pay or adequately provide first for the payment of the Company's liabilities and obligations to its creditors, second to satisfy its obligations to PAA pursuant to Section 12(c) of the Joint Plan (and the corresponding provision of the Joint Plan), and thereafter distribute all of the Company's remaining assets to the Member(s) or, as the Board may determine, to dispose of such assets to such organization or organizations that are: (i) organized and operated exclusively for charitable, educational, or scientific purposes as at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code, (ii) at the time are described in Section

170(c)(2) of such Code; and (iii) whose activities are in furtherance with the tax-exempt purposes of Purdue University or Purdue Research Foundation. If any assets are not so distributed or disposed of, the appropriate court of Tippecanoe County, Indiana may dispose of such assets exclusively for the purposes stated in Article II of this Agreement, and exclusively to such organization or organizations which are organized and operated exclusively for such purposes and at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code, as the court may determine.

## **Article VIII. Indemnification**

8.1 **Indemnification.** To the greatest extent consistent with Indiana law and public policies, the Company shall indemnify any Member, organizer, or Manager (any Member, organizer, or Manager who is a person, and any responsible officers, partners, shareholders, directors, or managers of a Member, organizer, or Manager that is an entity, are referred to in this Article VIII as the “individual”) made a party to any proceeding because the individual is or was a Member, organizer, or Manager as a matter of right, against all liability incurred by the individual in connection with any proceeding; if it is determined in the specific case in accordance with Section 8.4 of this Article VIII that indemnification of the individual is permissible in the circumstances because the individual has met the standard of conduct for indemnification set forth in Section 8.3 below. The Company shall pay for or reimburse the reasonable expenses incurred by a Member, organizer, or Manager in connection with any such proceeding in advance of final disposition of a claim if (1) the individual furnishes the Company a written affirmation of the individual’s good faith belief that the individual has met the standard of conduct for indemnification described in Section 8.3 below, (2) the individual furnishes the Company a written undertaking, signed personally or on the individual’s behalf, to repay the advance if it is ultimately determined that the individual did not meet that standard of conduct, and (c) a determination is made in accordance with Section 8.4 below that based on facts then known to those making the determination, indemnification would not be precluded under this Article VIII. The undertaking described in Subsection 8.1(2) above must be a general obligation of the individual, subject to reasonable limitations as the Company may permit, but need not be secured and may be accepted without reference to financial ability to make repayment.

The Company shall indemnify a Member, organizer, or Manager who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without the requirement of a determination as set forth in Section 8.3 below. Upon demand by a Member, organizer, or Manager for indemnification or advancement of expenses, as the case may be, the Company shall promptly determine whether the Member, organizer, or Manager is entitled to indemnification in accordance with this Article VIII. The indemnification and advancement of expenses provided for under this Article VIII shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article VIII.

8.2 **Employees, Agents.** The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if the individual was a Member, organizer, or Manager.

8.3 **Standard of Conduct.** Indemnification of an individual is permissible under this Article VIII only if (a) the individual's conduct was in good faith, (b) the individual reasonably believed that the individual's conduct was in or at least not opposed to the Company's best interest, and (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful. Indemnification is not permissible against liability to the extent that liability is the result of willful misconduct or recklessness. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the individual did not meet the standard of conduct described in this Section 8.3. If several claims, issues or matters of action are involved, any individual may be entitled to indemnification as to some matters even though the individual is not so entitled as to others.

8.4 **Determination.** A determination whether indemnification or advancement of expenses is permissible shall be made by the majority vote of the Managers not at the time parties to the proceeding, or by special legal counsel selected by vote of a majority of the Managers.

8.5 **Court Determination.** A Member, organizer, or Manager of the Company who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice that the court considers necessary, may order indemnification if it determines that:

8.5.1 The individual was wholly successful, on the merits or otherwise, and is entitled to indemnification under this Article VIII, in which case the court also shall order the Company to pay the individual his or her reasonable expenses incurred to obtain court ordered indemnification; or

8.5.2 The individual is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the individual met the standard of conduct set forth in Section 8.3 above.

8.6 **Non-Exclusive.** Nothing contained in this Article VIII shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a Member, Manager, or organizer of the Company or is or was serving at the Company's request as a director, officer, partner, manager, trustee, employee, or agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not. Nothing contained in this Article VIII shall limit the ability of the Company to otherwise indemnify or advance expenses to an individual. It is the intent of this Article VIII to provide indemnification to any Member, Manager, or organizer to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Article VIII. If indemnification is permitted under this Article VIII, indemnification shall be provided in accordance with this Article VIII regardless of the nature of the legal or equitable theory on which the claim is asserted, including without limitation negligence, breach of duty, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

8.7 **Insurance.** The Company may purchase and maintain insurance for its benefit, for the benefit of an individual who is entitled to indemnification under this Article VIII, or both, against any liability asserted against or incurred by the individual in any capacity or arising out of the individual's service with the Company, whether or not the Company would have the power to indemnify the individual against that liability.

8.8 **Definitions.** For purposes of this Article VIII, the following terms have the following meanings;

8.8.1. ***Expenses.*** The term "expenses" means all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Article VIII, applicable law or otherwise.

8.8.2. ***Liability.*** A "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

8.8.3. ***Party.*** A "party" means an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

8.8.4. ***Proceeding.*** A "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

## **Article IX. Conflict of Interest**

No contract or other transaction between the Company and a Member shall be either void or voidable because of such relationship. The Board shall adopt and may revise from time to time a policy respecting conflicts of interest to promote the proper stewardship of its funds and to protect the tax exempt status of its Members.

## **Article X. Miscellaneous**

10.1 **Coordination with the Act.** The Act includes provisions governing the business and affairs of limited liability companies that can be overruled by the provisions of a written operating agreement adopted by the initial Member or by the articles of organization of the Company. In construing this Agreement and the Articles and in coordinating their respective provisions with the Act, the initial Member and the Board intend that whenever this Agreement or the Articles address a certain subject, those provisions of this Agreement or the Articles will control over the provisions of the Act with respect to that same subject and shall be construed as

overruling any conflicting provisions of the Act with respect to that subject. If this Agreement and the Articles are silent as to a subject or matter covered by the Act, the relevant provisions of the Act will control.

10.2 **Binding Agreement.** This Agreement is binding on and enforceable by and against the parties and their heirs, successors, legal representatives, and permitted assigns.

10.3 **Governing Law; Exclusive Jurisdiction; Exclusive Venue.** This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana. Courts of competent authority located in Tippecanoe County, Indiana shall have sole and exclusive jurisdiction of any action arising out of or in connection with this Agreement, and those courts shall be the sole and exclusive venue for any such action.

10.4 **Severability.** No part of this Agreement will be affected if any other part of this Agreement is held invalid or unenforceable.

10.5 **Notices.** Unless otherwise provided in this Agreement, all notices required or permitted to be given under this Agreement must be given in writing, and will be deemed given when personally delivered or, if earlier, when received after mailing by U.S. mail, postage prepaid. Notice to any Member is valid if sent to the Member at the Member's address as it appears in the Company's records.

10.6 **Waiver.** Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

10.7 **Gender and Number.** Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

10.8 **Definitions.** For all purposes of this Agreement, the following terms have the following meanings:

10.8.1 ***Members.*** The "Members" include Purdue Research Foundation and any other persons who thereafter become Members in accordance with the terms of this Agreement.

10.8.2 ***Membership Units.*** The "Membership Units" are all of the initial percentage ownership interests in the Company and any additional Membership Units in the Company issued by the Company in accordance with the terms of this Agreement to any person, including (but not limited to) Membership Units issued in any recapitalization or reorganization of any type.

10.9 **Amendment.** This Agreement may be amended or restated only with the unanimous vote of the Board; *provided, however*, that it may be terminated if the transactions contemplated by the Joint Plan are not consummated.

**Article XI**  
**Effective Date**

This Agreement shall become effective as of the date first above written.

**PURDUE RESEARCH FOUNDATION**

By: \_\_\_\_\_  
Brian E. Edelman, President



**AMENDED AND RESTATED SERVICES AGREEMENT  
BETWEEN PURDUE RESEARCH FOUNDATION  
AND THE TRUSTEES OF PURDUE UNIVERSITY**

This Amended and Restated Services Agreement (this “Agreement”) is made and entered into as of the 31<sup>st</sup> day of March, 2021, to be effective as of April 1, 2021 (the “Effective Date”), by and between PURDUE RESEARCH FOUNDATION, an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as “PRF”), and THE TRUSTEES OF PURDUE UNIVERSITY, a body corporate organized and existing under the laws of the State of Indiana for the purpose of operating Purdue University (hereinafter referred to as “Purdue” or the “University”).

**WITNESSETH**

**WHEREAS**, since its founding in 1869 as the land grant university for the State of Indiana under the Morrill Land Grant Act of 1862, Purdue has become one of the nation’s leading public research universities and has expanded from its historic West Lafayette campus to a multi-campus system, through which it serves the people of Indiana, the nation and the world through education, research and outreach; and

**WHEREAS**, responsibility for making rules and regulations to govern Purdue is vested in its Board of Trustees (the “Trustees”), as prescribed in Section 21-23-3 of the Indiana Code (“IC”); and

**WHEREAS**, PRF was created in 1930 as a separately incorporated nonprofit entity, the primary purposes of which are to promote the educational purposes of the University; to award scholarships, grants, or other financial assistance to students and faculty; to seek, acquire, and hold gifts and endowments for the needs of the University; to acquire property or facilities for the future use or benefit of the University; and to support and assist, in any other manner or by any other means whatsoever, the Trustees in the conduct of the affairs of the University and the accomplishment of its educational purposes; and

**WHEREAS**, from its inception, PRF was conceived as a vehicle to support the University so that its knowledge and discoveries could be more effectively translated into solutions to real-world problems and drivers of economic growth and societal benefits; and

**WHEREAS**, today PRF is an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and it manages and licenses intellectual property developed at the University, supports technology commercialization efforts, accepts gifts, administers trusts, acquires property, facilitates innovative projects and initiatives undertaken within the Purdue ecosystem, and performs other services helpful to the University; and

**WHEREAS**, PRF’s performance of services in support of the University is aided, in turn, by its having access to research resources and expertise available through the University, with this access better enabling PRF to advance the shared mission of promoting discovery, commercializing technology and driving economic development; and

**WHEREAS**, consistent with its reputation as a leading public research university, Purdue has one of the nation’s largest cyberinfrastructure platforms, which is administered through a centralized

information technology resource center (“ITaP”) that enables Purdue to provide efficient database, computing and electronic communications services to users having access to its network, including PRF; and

**WHEREAS**, in light of its core competencies and its role as a supporting organization to the University, PRF is well-positioned to serve as a focal point for certain key functions that are vital to the ongoing success of the University’s missions of advancing learning, discovery, engagement, and student affordability and accessibility; and

**WHEREAS**, PRF’s supporting role to Purdue has been memorialized through the years in various service agreements between Purdue and PRF; and

**WHEREAS**, pursuant to the current Services Agreement between the parties dated January 1, 2014 (the “Original Agreement”), which was entered into at the time of the University’s transfer to PRF of the Development Office (“UDO”) and the Office of Investments (“OOI”), PRF agreed to provide certain “Services” (as that term is defined in the Original Agreement) to Purdue, and Purdue agreed to pay to PRF the “PRF Fee” (as that term is defined in the Original Agreement) in consideration of such Services; and

**WHEREAS**, in the years since execution of the Original Agreement, the parties have approved nine amendments to the Original Agreement and entered into various memoranda of understanding and side letters thereunder for purposes of, among other things, (a) extending its duration and payment terms through June 30, 2021, (b) correcting amendment numbering and references and making assorted other ministerial corrections and changes, and (c) expanding the scope of the Services to include (i) the creation of the Back a Boiler program, (ii) the development of the Discovery Park District and Purdue Aerospace District, and (iii) the establishment of new entities, including National Security Leadership, LLC, a PRF subsidiary (“NSL”), to support Purdue’s efforts to engage in research, testing and technology development in the areas of national defense, national security, and public health and to advance U.S. technology diplomacy through the development of engineering expertise in the U.S. foreign policy community; and

**WHEREAS**, the University has requested PRF’s assistance in an additional initiative that will consolidate and coordinate all of the University’s outward-facing development, stewardship, and alumni engagement activities within a new nonprofit entity, the Purdue for Life Foundation, LLC (“P4L”), as part of an effort to promote Purdue’s mission to external stakeholders under a unified “One Purdue” banner; and

**WHEREAS**, accordingly, concurrent with the Effective Date and pursuant to a Joint Plan and Reorganization Agreement (the “Joint Plan”) and related agreements, all of even date herewith, Purdue, PRF, P4L and the Purdue Alumni Association, Inc. (“PAA”) are participating in a reorganization (the “PAA Reorganization”) whereby (a) PRF will continue to manage the PAA investment account, (b) P4L will perform most of the alumni engagement functions previously performed by PAA, and (c) PAA will transfer its assets, employees and functions, as well as periodic distributions from investment account roll-offs (after expenses), for deployment at P4L; and

**WHEREAS**, concurrent with the Effective Date, and pursuant to a Contribution and Services Agreement with P4L of even date herewith (the “Contribution and Services Agreement”), PRF is transferring to P4L substantially all of the UDO assets and liabilities (including the UDO office space

lease) and is deploying to P4L the UDO personnel as well as the PAA personnel who were transferred under the Joint Plan, and PRF and P4L are each agreeing to provide specified services to the other; and

**WHEREAS**, in connection with the PAA Reorganization and the Contribution and Services Agreement, PRF has agreed to continue to serve as the employer of record for the UDO personnel and the former PAA personnel who have been deployed to P4L and to perform payroll, human resources and benefits services for all such personnel; and

**WHEREAS**, to ensure the successful future use of NSL or other PRF subsidiaries to facilitate Purdue's creation of or participation in national laboratories, consortia, centers or institutes to advance Purdue's mission, PRF may be called upon, at Purdue's request to expand its role in supporting these efforts; and

**WHEREAS**, the parties desire to restate the Original Agreement, as previously amended and as further amended herein, to a single document represented by this Agreement:

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises and undertakings hereinafter set forth, it is mutually understood and agreed as follows:

1. **TERM AND TERMINATION:** The term of this Agreement shall begin on the Effective Date and shall continue until June 30, 2022, unless terminated sooner as provided herein.
  - 1.1 Subject to early termination as provided herein, this Agreement shall be reviewed on an annual basis (generally in the calendar quarter prior to the end of the then current term) and shall automatically renew for successive additional terms of one (1) fiscal year each (each, an "Extension Period"), unless either party provides prior written notice to the other party of its intention to terminate this Agreement as of the end of the then current term.
  - 1.2 Either party may, at its option, and without limitation to other rights, terminate this Agreement upon ninety (90) days' advance written notice to the other party.
  - 1.3 In addition, in the event of a party's material breach or nonperformance of its obligations hereunder, the non-breaching party may terminate this Agreement by giving written notice of such breach or nonperformance to the other party. The party receiving such notice will be given 10 days to respond to any noted deficiencies in performance. Failure to adequately address non-performance within such 10-day period may result in immediate termination by the non-breaching party.
  - 1.4 In the event of termination, the parties shall cooperate in good faith to conduct a full accounting of all amounts owed under this Agreement and settle all accounts between them, after giving effect to the amount of any fees advanced but unearned and the amount of "PRF Services" and "Purdue Services" (as such terms are hereinafter defined) performed through the effective date of such termination.
2. **PRF-PROVIDED SERVICES:** This Section 2 describes the services to be provided by PRF hereunder (collectively, the "PRF Services") and the manner in which the scope of such PRF Services may be adjusted by mutual agreement from time to time.

2.1 ***PRF Services—General.*** During the term of this Agreement, PRF shall:

- 2.1.1 provide PRF personnel necessary to ensure the delivery of the PRF Services being performed for Purdue's benefit under this Agreement, including by, among other things, covering the salary, wages, benefits, supplies, and expenses of such PRF personnel in accordance with PRF's own compensation policies and plans;
- 2.1.2 provide real estate management and related planning, acquisition, reporting, lease review, and tax reporting services;
- 2.1.3 provide ongoing support and processing of gifts made by donors for the University's benefit, whether through PRF, in the name of the "Purdue Foundation," or otherwise;
- 2.1.4 support trusts and other structured or planned gifts made in support of Purdue (including charitable remainder trusts), provide related accounts management, distribution processing and reporting services related to such gifts, and as necessary coordinate such activities with P4L in the manner described in Section 2.3.1 below;
- 2.1.5 provide the investment management services that are more fully described in Section 2.3;
- 2.1.6 provide management and support services for certain key administrative functions related to the Office of the President, the Office of the Trustees, the Office of Technology Commercialization, the Presidential residence at Westwood, and Purdue Flight Operations, all based on such needs, commitments and service levels as may be mutually agreed upon from time to time between PRF and Purdue;
- 2.1.7 assist in research, development, patent prosecution and other activities necessary to provide operational and strategic support for Purdue's technology commercialization efforts;
- 2.1.8 provide administrative and support services for other foundations that function as supporting organizations for Purdue, including but not limited to the Ross-Ade Foundation;
- 2.1.9 provide support for the operation and management of national laboratories and similar organizations as more fully described in Section 2.5;
- 2.1.10 participate in and support events, programs and economic development relationships with Purdue's local, state and federal stakeholders; and
- 2.1.11 provide such other PRF Services as may be mutually agreed upon between PRF and Purdue from time to time.

- 2.2 ***Office of Investments.*** During the term of this Agreement, and in support of the management of Purdue's endowment, PRF shall continue to provide investment services through its OOI and pursuant to the Investment Agency Agreement between the parties, dated January 1, 2014. PRF shall also permit, as it deems appropriate or at the University's request, investment by outside organizations, including PAA, of their endowments/investment accounts through participation in the Unitized Investment Pool pursuant to PRF's established investment policies.
- 2.3 ***Development, Stewardship and Alumni Engagement.*** During the term of this Agreement, and in recognition of the anticipated benefits to the University of the actions contemplated by the Joint Plan and the Contribution and Services Agreement, PRF shall:
- 2.3.1 continue to cooperate and coordinate with P4L with respect to the administration of the development function for the University, which include:
    - 2.3.1.1 depositing into the appropriate PRF account any funds related to a gift or other contribution received by P4L/UDO via fundraising operations, once such gift or contribution is secured and recorded and memorialized by any necessary trust documentation; and
    - 2.3.1.2 serving as Purdue's agent with respect to the receipt and management of such gifts and other contributions that have been made by donors for the benefit of Purdue or one of its schools, colleges, departments or other units (with the exception of gifts made to support specific research programs that are administered as 'voluntary support awards' by the Sponsored Program Services department, as contemplated by University policy II.B.6, as it may be amended or replaced from time to time provide the following services, as contemplated by the Joint Plan and the Contribution and Services Agreement;
  - 2.3.2 provide corporate infrastructure support to its wholly-owned subsidiary, P4L, until such time (if any) as P4L becomes a standalone entity;
  - 2.3.3 adhere to the terms of the P4L operating agreement, which describe PRF's limited role with respect to the affairs of P4L;
  - 2.3.4 provide administrative, human resources, benefits and payroll services for the benefit of PRF employees who are assigned to work for P4L, whether such employees were previously PAA or UDO employees, in accordance with the Joint Plan and the Contribution and Services Agreement, including by permitting such employees to participate in PRF's health insurance and other benefit plans at P4L's expense;
  - 2.3.5 remit to P4L the "Endowment Fee," as that term is defined in the Services Agreement between the University and P4L, which PRF has joined for this limited purpose, in the amount and on the schedule as directed by the University, to support the UDO development function within P4L, but with the

understanding that such remittance shall be net of the PRF Fees described in the Contribution and Services Agreement;

- 2.3.6 continue to provide any services required to be performed by PRF under the Joint Plan or the agreements contemplated thereby, including the maintenance of the PAA investment account pursuant to the Outside Organization Participation Agreement entered into with PAA in accordance with the Joint Plan;
- 2.3.7 cooperate with P4L as necessary to comply with the protective provisions described in Section 9(e) of the Joint Plan; and
- 2.3.8 comply with PRF's covenant of non-interference set forth in Section 11 of the Joint Plan.

2.4 ***PRF Services—NSL, Centers and Other Special Purpose Entities.*** During the term of this Agreement, and in relation to future uses of NSL or other PRF subsidiaries to facilitate Purdue's creation of or participation in national laboratories, consortia, centers or institutes to advance Purdue's mission, PRF shall provide the following services:

- 2.4.1 corporate infrastructure support such as the formation and maintenance of divisions of NSL or new subsidiaries (including maintaining appropriate corporate formalities and corporate books, filing applicable tax filings and arranging for accounting and other administrative and human resources support); the recruitment and employment of personnel; the designation of directors and officers to support the corporate structure; and the provision of guarantees to government sponsors, project partners or other third party entities as the same may be required and requested by the University depending on regulatory or procurement requirements related to project organizational structure; and
- 2.4.2 receive and dedicate the proceeds resulting from such participation in national laboratories, consortia, centers or institutes to advance Purdue's education, discovery and/or engagement missions.

3. **PURDUE-PROVIDED ASSURANCES AND SERVICES.** This Section 3 describes certain assurances and services to be provided by Purdue hereunder (collectively, the "Purdue Services") and the manner in which the scope of such Purdue Services may be adjusted by mutual agreement from time to time.

- 3.1 In consideration of PRF's willingness to participate in the PAA Reorganization and perform the services described in connection with the Contribution and Services Agreement, the Joint Plan, and the agreements contemplated thereby, Purdue shall, subject to applicable constitutional and statutory limitations, hold PRF harmless from the associated costs of such activities, and in the event PRF is required to fund or otherwise financially support P4L due to P4L's inability to meet its financial obligations as they become due, Purdue will take all lawful actions necessary to enable PRF to meet any such obligation while continuing to be a viable supporting organization for Purdue.

- 3.2 In consideration of PRF's willingness to perform services and to receive and dedicate proceeds resulting from participation in national laboratories, consortia, centers or institutes to advance Purdue's education, discovery and/or engagement missions, Purdue shall, subject to applicable constitutional and statutory limitations, hold PRF harmless from the associated costs of such activities, and in the event PRF or any subsidiary is required to deliver and perform under any guaranty, surety or other form of financial security obligation incurred in connection with the operation and management of any such national laboratory, consortium, center or institute, Purdue will take all lawful actions necessary to enable PRF to meet any such obligation while continuing to be a viable supporting organization for Purdue.
- 3.3 Purdue shall provide information technology support services to PRF through ITaP, based on such needs, commitments and service levels as may be mutually agreed upon from time to time between PRF and Purdue, to include (i) a range of services for the management of PRF data, systems and support, including without limitation application development and maintenance, application interfaces, desktop support, database administration, Web hosting, server administration, backups, monitoring, operational support for hardware and operating systems, network file storage, and logon and security services, as well as (ii) access to the applications and platforms identified in Exhibit A (it being understood that such Exhibit may be amended or updated from time to time based on the parties' mutual agreement, as memorialized in a writing coordinated by the "Joint Oversight Team Leaders" (as hereinafter defined) and signed by the parties).
- 3.4 Purdue shall provide research-support resources, personnel and expertise to PRF through the Office of the Executive Vice President for Research and Partnerships and Sponsored Program Services, based on such needs, commitments and service levels as may be mutually agreed upon from time to time between PRF and Purdue.
- 3.5 Purdue shall serve as PRF's agent with respect to the administration of awards that were directed to PRF pursuant to donor and/or sponsor policies but that serve the University's interests.
- 3.6 Purdue shall provide such other services as may be mutually agreed upon between Purdue and PRF from time to time.
4. **JOINT OVERSIGHT TEAM.** Each party shall designate a team of persons who collectively have practical knowledge and subject matter expertise in each area of the services being provided hereunder and who are authorized to identify issues that require attention to ensure the smooth and efficient performance of the PRF Services and the Purdue Services (collectively, "Services"), as applicable (the "Joint Oversight Team"). Each party shall designate a member of the Joint Oversight Team (collectively, the "Joint Oversight Team Leaders"), who shall have joint responsibility and authority for making team task assignments; assessing, monitoring and reporting the progress of such assignments; evaluating and discussing the advisability of any changes to the existing needs, commitments and service levels associated with the services being provided by each party hereunder; and making initial efforts to resolve any disputes or misunderstandings that may arise in connection with the performance of such Services prior to the implementation of the procedures set forth in Section 21. At its discretion, either party may appoint replacement Joint Oversight Team members and Joint Oversight Team Leaders upon

notice to the other party. It is contemplated that the Joint Oversight Team Leaders shall collaborate closely and stay in regular communication during the term of this Agreement to gather and exchange information, and that meetings of the Joint Oversight Team (or any subsets or ad hoc committees thereof) will occur periodically on an as-needed basis upon the call of the Joint Oversight Team Leaders.

5. **PAYMENT:** The fees for the PRF Services will be designed to cover PRF's costs in providing such services, subject to: (i) the recognition—consistent with past practice—of PRF's mission of serving as a supporting organization to Purdue (including by, among other things, providing financial support to the University), (ii) appropriate mutually agreed upon adjustments based on the costs actually borne by a party in providing services hereunder, and (iii) appropriate set-offs to give effect to the Purdue Services and other mutual payments made and received for the services rendered by the parties to each other hereunder.

5.1 The amount of the fee for the PRF Services (the "PRF Fee") will be negotiated and determined at least annually (or more frequently as the parties may agree) through discussions among the members of the Joint Oversight Team having expertise on the parties' respective financial and budgetary affairs (the "Finance Representatives"). The PRF Fee will be subject to adjustment and set-off (including for the value and expense of the Purdue Services) as provided herein. The PRF Fee will be payable as follows:

5.1.1 As soon as practicable in the fourth fiscal quarter of each fiscal year, the Finance Representatives will meet to confirm the PRF Services expected to be performed by PRF in the forthcoming fiscal year and to determine the budgeted PRF Fee for such services (the "Fee Determination Date").

5.1.2 Promptly after the conclusion of each fiscal year, Purdue will remit to PRF the PRF Fee for the forthcoming fiscal year, subject to (i) any adjustments that the Finance Representatives have identified since the Fee Determination Date, including with respect to costs incurred by PRF in providing the PRF Services in the prior fiscal year that were not yet known on the Fee Determination Date, and (ii) any appropriate setoff for amounts expected to be owed by PRF for Purdue Services in the forthcoming fiscal year, as identified and budgeted by the Finance Representatives.

5.2 The amount of the fee for the services provided by Purdue pursuant to Section 3 (the "Purdue Fee") will be negotiated and determined at least annually (or more frequently as the parties may agree) through discussions among the Finance Representatives and will take into account (a) the needs, commitments and service levels associated with the information technology services described in Section 3.3, and (b) the amounts set forth in any memoranda of understanding or other instruments entered into pursuant to Section 22 hereof that relate to funding commitments made by PRF to Purdue for Purdue Services provided hereunder (whether administered through Purdue's Office of Executive Vice President for Research and Partnerships or otherwise). The Purdue Fee will be subject to adjustment and set-off as provided herein. The payment of the Purdue Fee will be satisfied by netting amounts owed by PRF in respect of the Purdue Fee against the PRF Fee payable by Purdue hereunder. This set-off calculation will be made at such times and with such



frequency as the Finance Representatives shall decide, but in any event no less frequently than annually (at the time of the fiscal year review described in Section 5.1.2 above).

6. **WARRANTIES AND INSPECTION:** Each party warrants that all Services provided by it under this Agreement shall be performed in a good and workmanlike manner and with that degree of skill and care that such party would normally exercise in performing similar services for itself in the ordinary course of conducting its own business and, in any event, with such degree of skill and care as is consistent with general standards of practice among institutions of higher education and their affiliated foundations. Without limiting the generality of Section 12, PRF further warrants that all PRF-provided Services under this Agreement shall comply with any and all building laws, ordinances, and regulations of any and all governmental agencies entitled to impose such laws, ordinances and regulations and shall comply with Purdue's standards, rules and regulations. PRF shall maintain thorough and complete records of its PRF Services performed for Purdue under this Agreement as well as the costs related to such PRF Services. PRF agrees to cooperate with Purdue in any audit or review relating to the provision of PRF Services pursuant to this Agreement. Purdue shall have the right, upon reasonable notice to PRF, to audit and inspect PRF's books and records reflecting the direct costs and disbursements incurred or made in connection with the PRF Services under this Agreement and the basis on which the costs were derived.
7. **WORK PRODUCT:** All types of work product produced or created by PRF in the course of performing the PRF Services under this Agreement for Purdue's benefit (including without limitation any research results and reports) shall be deemed a "work made for hire," the right, title and interest in which shall reside in Purdue. PRF will execute any necessary confirmatory assignments to Purdue to effectuate the foregoing.
8. **CONFIDENTIALITY:** During the term of this Agreement and thereafter, PRF shall not disclose or use for the benefit of other than Purdue any Restricted Data. For purposes of this Agreement, the term "Restricted Data" shall include, without limitation, confidential or proprietary information, any Social Security Numbers, any Protected Health Information, as that term is defined in 45 C.F.R. §160.103, as amended, of the Health Insurance Portability and Accountability Act (HIPAA) regulations, any Customer Information, as that term is defined in 16 C.F.R. § 314, as amended, of the Gramm-Leach-Bliley Safeguards Rule, any information contained in any Education Records, as that term is defined in 34 C.F.R. §99.3, as amended, of the Family Educational Rights and Privacy Act (FERPA) regulations, and any information protected by any other applicable state or federal law imposing similar privacy or security obligations.
  - 8.1 PRF represents that it does not have in its possession, and has not used for the benefit of Purdue, any confidential information or documents belonging to others.
  - 8.2 PRF represents that its retention by Purdue to perform the PRF Services hereunder will not require it to violate any obligation to others, under agreement or otherwise, or to violate any confidence of others.
  - 8.3 PRF knows of no written or oral agreement or of any other impediment which would inhibit or prohibit the relationship with Purdue provided for herein.

- 8.4 PRF represents that it will not, by signing this Agreement or performing the PRF Services, violate any rights, including but not limited to intellectual property rights such as trademark, trade secret and copyright, of any other individual or entity.
- 8.5 The parties acknowledge and agree that, as a private corporation, PRF has the authority and obligation to keep its own records and data confidential in accordance with applicable law. It is expressly acknowledged that PRF is not an agency of the State of Indiana and is thus not subject to regulations of the Indiana State Board of Accounts, the requirements of the Indiana Access to Public Records Act, or any other requirements applicable to public agencies.
9. **HIPAA BUSINESS ASSOCIATE REQUIREMENTS:** At this time, it is not anticipated that the PRF-provided Services will entail PRF's having access to any Protected Health Information (PHI), as defined in the HIPAA "privacy and security regulations." Nonetheless, out of an abundance of caution, and to the extent PRF has or may have access to PHI by virtue of the PRF Services it is expected to perform hereunder, PRF has previously executed a Business Associate Addendum, which remains in full force and effect.
10. **SECURITY OF RESTRICTED DATA:** PRF represents and warrants that it has and maintains a written comprehensive information security program containing appropriate administrative, technical and physical safeguards for the security and protection of Restricted Data. PRF further represents and warrants that its security program is periodically reviewed, and appropriate updates are implemented, to address any gaps identified in its security program. PRF agrees to make its security policies and procedures available to Purdue upon reasonable request.
- 10.1 PRF expressly agrees to:
- 8.1.1 Protect the security and confidentiality of Restricted Data it receives or accesses in accordance with its information security program and this Agreement and further agrees to comply with the requirements of IC 4-1-10 concerning any social security numbers included in the Restricted Data.
  - 8.1.2 Limit access to Restricted Data to those employees who have a legitimate business need to know the information.
  - 8.1.3 Prohibit disclosure of any social security numbers included in the Restricted Data except as expressly permitted by IC 4-1-10.
  - 8.1.4 Require all of its subcontractors and agents that receive, use or have access to Restricted Data to agree to implement reasonable and appropriate security safeguards to protect it and to agree in writing to the confidentiality and security requirements of this Agreement.
  - 8.1.5 Understand the requirements of IC 4-1-11 concerning breaches of security and notification of disclosures of social security numbers and personally identifiable information, and to immediately report to Purdue any security incident involving any social security numbers or other Restricted Data of which it becomes aware, and to provide Purdue with all information

necessary to permit Purdue to timely comply with the notification provisions of I.C. 4-1-11 and its implementing rules. To the extent PRF is required to make its own notification under law concerning any Restricted Data, PRF agrees to cooperate with Purdue regarding the notification process prior to making such notification.

8.1.6 Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as defined in 16 CFR 681.2) or that may arise in the performance of PRF’s activities, if PRF has access to customer information from covered accounts under the Red Flag Rules. PRF agrees that policies and procedures to detect relevant “Red Flags” are updated periodically. PRF further agrees to notify Purdue of the detection of a Red Flag and to implement reasonable steps to prevent or mitigate identify theft.

10.2 PRF represents and warrants that it will not use any of Purdue’s Restricted Data for any purpose other than those permitted purposes set forth in this Agreement.

10.3 At the completion of this Agreement, PRF will physically or electronically destroy beyond all ability to recover any and all Restricted Data provided to it. This includes any and all copies of the data such as backup copies created at any PRF site.

11. **GOVERNING LAW:** This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.

12. **COMPLIANCE WITH GOVERNMENT STATUTES AND REGULATIONS:** Each party warrants and certifies that, in the performance of the Services to be provided by it under this Agreement, it has complied with or will comply with all applicable statutes, rules, regulations and orders of the United States, and any state or political subdivision thereof, including without limitation laws and regulations pertaining to privacy and security of information, labor, wages, hours and other conditions of employment, and applicable price ceilings, if any, and that the Services delivered hereunder shall be performed in compliance with the Fair Labor Standards Act.

13. **INDEMNIFICATION:** PRF agrees to indemnify Purdue and hold it harmless from and against all liability, losses, damages, claims, liens, and expense (including reasonable legal fees) arising out of or connected with the PRF Services, excepting only such liability as may result solely from the acts of negligence of Purdue or its employees. PRF shall, at the request of Purdue, undertake to defend any and all suits and to investigate and to defend any and all claims, whether justified or not, if such claim or suit be against Purdue, the Trustees, or their respective officers, agents servants, and employees; provided, however, that PRF may not settle any claims against Purdue without Purdue’s prior written consent.

14. **BANKRUPTCY OR INSOLVENCY:** In the event of any proceedings in bankruptcy or insolvency by or against PRF, or in the event of the appointment (with or without PRF’s consent) of an assignee for the benefit of creditors or of a receiver on behalf of PRF, Purdue may terminate this Agreement forthwith.

15. **LIMITATION OF LIABILITY:** Each party shall give the other party the benefit of its best judgment and efforts in rendering the Services required to be performed by it under this Agreement. Except to the extent provided under applicable law, neither party shall be liable to the other party for any act or omission whatsoever of any employee, agent or representative acting on its behalf or for its own acts or omissions in the performance of its Services under this Agreement. The provisions of this Section 15 shall survive the termination of this Agreement.
16. **NONDISCRIMINATION:** PRF, or its subcontractor(s), if any, shall not discriminate against any qualified employee or applicant for employment in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, age, national origin or ancestry, disability or status as a disabled or Vietnam era veteran or any other basis prohibited by applicable law. PRF, or its subcontractor(s), if any, agree to comply with all the provisions contained in Executive Orders No. 11246 and No. 11375, the Equal Employment Opportunity Clause requirements as set forth at 41 CFR 60-1.4, 41 CFR 60-250.22 and 41 CFR 60-741.5(a), which are hereby incorporated by reference and made a part hereof, and the nondiscrimination mandates of the Indiana Civil Rights Law as presently codified at Ind. Code § 22-9-1-1 *et seq.* As used therein the word "contractor" shall be deemed to mean "PRF," and the word "contract" shall refer to this Agreement. In addition, PRF shall cause the Equal Opportunity Clauses references above to be included in their subcontracts or purchase orders hereunder unless exempted by rules, regulations and orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended.
17. **CONFLICT OF INTEREST:** An Indiana criminal statute (IC 35-44-1-3) prohibits public servants from knowingly or intentionally having a pecuniary interest in, or deriving a profit from, any Agreement or purchase connected with an action by the governmental entity which such person serves, with certain stated exceptions. Accordingly, if any person having any interest in PRF is an officer or employee of Purdue, disclosure of this fact must be made so that the possible application of this statute may be investigated.
18. **NO THIRD PARTY BENEFICIARIES:** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and their respective successors or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
19. **SURVIVAL:** The confidentiality and security requirements set forth in Sections 8, 9, and 10 of this Agreement shall survive the termination of this Agreement.
20. **NOTICES:** Any notice or other correspondence required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been given if: (a) served personally, (b) sent by email with confirmation of receipt, or (c) sent by first class mail, postage prepaid, to the addresses set forth below or to such other addresses as either party hereto may designate by notice to the other party.

**Purdue Research Foundation, Inc.**  
Kurz Purdue Technology Center  
1281 Win Henschel Boulevard  
West Lafayette, IN 47906  
Attn: Scott Seidle, CFO

**Purdue University**  
Treasurer's Office  
610 Purdue Mall  
West Lafayette, IN 47907  
Attn: Christopher Ruhl, Treasurer

& Treasurer  
Phone: (765) 588-1061  
Email: seidle@prf.org

and CFO  
Phone: (765) 496-6844  
Email: ruhlc@purdue.edu

## 21. DISPUTE RESOLUTION:

- 21.1 **Negotiation.** Any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort, or statute (a “Dispute”), shall first be resolved through good faith negotiations. Toward this end, the parties shall use their best efforts to settle the Dispute by direct negotiations between their designated Joint Oversight Team Leaders, in consultation with other party representatives having appropriate settlement authority. If the Joint Oversight Team Leaders and such other representatives cannot resolve the Dispute within thirty (30) days, then the matter shall be referred to PRF’s President and Purdue’s Treasurer, who will meet to resolve the Dispute.
- 21.2 **Mediation.** If the matter has not been resolved within sixty (60) days of either party’s initial request for formal negotiation pursuant to the foregoing provision, then either party may terminate the negotiations by written notice to the other party, whereupon the parties shall submit the Dispute to mediation before a mutually agreeable neutral mediator. In initiating and conducting such mediation, the parties shall comply with the provisions of Rule 8 (Optional Early Mediation) of the Rules for Alternative Dispute Resolution (the “ADR Rules”) under the Indiana Rules of Court, as the same may be amended from time to time. The neutral mediator required by the mediation procedure shall be a lawyer mutually selected from the list of registered mediators maintained by the Indiana Supreme Court Commission for Continuing Legal Education under the ADR Rules.
- 21.3 **Litigation.** If the Dispute has not been resolved through mediation within ninety (90) days of the above-referenced notice of termination of negotiations (or if the parties are unable to agree to a neutral mediator within such 90-day period), then either party wishing to pursue the Dispute may initiate litigation of the Dispute in a court of competent jurisdiction in Tippecanoe County, Indiana or otherwise in accordance with applicable law. Each party agrees that in any such action or proceeding, the matters shall be tried to a court and not to a jury. In the event any party hereto pursues litigation to enforce this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and court costs.

22. **FURTHER ASSURANCES:** Subject to the terms and conditions of this Agreement, the parties will use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the transactions contemplated herein and to ensure the smooth and efficient performance of the Services hereunder, including (i) preparing and filing as promptly as practicable with any governmental entity or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations, and other confirmations required to be obtained from any governmental entity or other third party that are necessary, proper or advisable to consummate the transactions contemplated herein. The parties

agree that, as the need may arise from time to time to document more specifically their respective commitments in connection with certain mutually-agreed upon arrangements related to the Services provided to each other hereunder, they shall negotiate in good faith and execute and deliver such memoranda of understanding or other instruments as are deemed necessary or appropriate to define and memorialize those commitments (it being understood that The Trustees of Purdue University may cause such memoranda of understanding or other instruments to be entered into in the name of the University).

23. **GENERAL:** If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect. This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein. There are no promises, covenants or undertakings other than those expressly set forth herein. Amendments, modifications or changes of or to this Agreement must be made in writing and signed by a duly authorized representative of both parties. PRF may not assign any rights under this Agreement. Subject to the foregoing sentence, this Agreement shall be binding upon Purdue and PRF, their successors and assigns. In performing the Services hereunder, each party will act solely as an independent contractor rendering professional services for the other party. Neither party shall have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, or joint venturer or partner between the parties, it being understood that PRF is an independent entity, separately incorporated and governed in accordance with its own constitutive documents.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

**THE TRUSTEES OF PURDUE UNIVERSITY**

**PURDUE RESEARCH FOUNDATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher Ruhl

Name: Scott Seidle

Title: Treasurer and  
Chief Financial Officer

Title: Chief Financial Officer &  
Treasurer

Purdue-Provided Platforms and Applications

*[Need to confirm/update this list]*

- Affinity Circle
- Allegiance
- Advizor
- Banner Admissions
- Banner Student Database
- COEUS
- Cognos
- Delivira
- Elucian Advance Web
- Financial Aid
- iModules (Encompass application and its interface to Ellucian Advance Web)
- Orbital
- Paciolan
- PayPal
- PUID
- SAP (including General Ledger/Finance & Human Resources)
- SharePoint
- SmartCall
- TouchNet
- UDODS
- UW Tips

Subject to its receipt of all appropriate acknowledgements and agreements from PRF personnel setting forth applicable data access and security protocols and agreeing to comply with policies designed to segregate and safeguard all Purdue systems and information that are not related to the PRF-provided Services hereunder, Purdue shall provide PRF personnel with access to the above-referenced platforms and applications to the extent necessary for PRF to perform such PRF-provided Services. The parties will, through the Joint Oversight Team, work on developing a mutually acceptable data and system conversion and migration plan that will be designed to allow PRF systems to gain, over time, more functional independence from ITaP systems. The parties will each use commercially reasonable efforts to assist the other in meeting any mutually agreed upon milestones, timelines and resource requirements that may be incorporated into such a plan. In that process, the parties will use the plan to synchronize their respective efforts related to data and system migration. Any modifications to the plan, including any schedule modifications, would require joint approval by the parties.



**CONTRIBUTION AND SERVICES AGREEMENT  
BETWEEN PURDUE RESEARCH FOUNDATION  
AND PURDUE FOR LIFE FOUNDATION, LLC**

This Contribution and Services Agreement (this “Agreement”) is made and entered into as of the 31<sup>st</sup> day of March, 2021, to be effective as of April 1, 2021 (the “Effective Date”), by and between PURDUE RESEARCH FOUNDATION, an Indiana nonprofit corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246 and presently governed by operation of law under the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as “PRF”), and PURDUE FOR LIFE FOUNDATION, LLC, an Indiana nonprofit limited liability company (hereinafter referred to as “P4L”).

**WITNESSETH**

**WHEREAS**, PRF was created in 1930 as a separately incorporated, nonprofit entity, the primary purposes of which are to promote the educational purposes of Purdue University (“Purdue” or the “University”); to award scholarships, grants, or other financial assistance to students and faculty; to seek, acquire, and hold gifts and endowments for the needs of the University; to acquire property or facilities for the future use or benefit of the University; and to support and assist, in any other manner or by any other means whatsoever, the Trustees of Purdue in the conduct of the affairs of the University and the accomplishment of its educational purposes; and

**WHEREAS**, today PRF is an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and it manages and licenses intellectual property developed at the University, supports technology commercialization efforts, accepts gifts, administers trusts, acquires property, facilitates innovative projects and initiatives undertaken within the Purdue ecosystem, and performs other services helpful to the University; and

**WHEREAS**, in light of its core competencies and its role as a supporting organization to the University, PRF has been called upon by Purdue to perform various functions, including serving as the focal point for the direct development and investment functions that are vital to the ongoing success of the University’s missions of advancing learning, discovery, engagement, and student affordability and accessibility; and

**WHEREAS**, PRF presently performs the direct development functions for the University through the University Development Office (“UDO”); and

**WHEREAS**, the University, PRF, P4L and Purdue Alumni Association, Inc. (“PAA”) have reached agreement on a collaborative approach to consolidate and coordinate the University’s outward-facing development, stewardship, and alumni engagement functions in P4L (the “PAA Reorganization”) as part of an effort to promote Purdue’s mission to external stakeholders under a unified “One Purdue” banner; and

**WHEREAS**, the PAA Reorganization is being effected through a Joint Plan and Reorganization Agreement (the “Joint Plan”) and related agreements, all effective as of the Effective Date, whereby (a) PRF will continue to manage the PAA investment account, (b) P4L will perform most of the alumni engagement functions previously performed by PAA, (c) PAA will transfer assets, investment account income, employees and functions for deployment at P4L, and (d) PRF will complete the transactions and perform the services contemplated by this Agreement, including certain

services with respect to employees that were previously employees of PAA and UDO and that will now be assigned to work at P4L; and

**WHEREAS**, P4L has agreed to conduct, manage and direct the fundraising operations of the University, which were previously performed by UDO within PRF, pursuant to a Services Agreement with the Trustees of the University (the “University/P4L Services Agreement”); and

**WHEREAS**, the PAA Reorganization and P4L’s Operating Agreement contemplate that P4L will operate independently of PRF under the direction of the P4L Board of Managers, notwithstanding that P4L is presently a wholly-owned subsidiary of PRF, with PRF serving as P4L’s sole member; and

**WHEREAS**, pursuant to the PAA Reorganization, P4L may at some point become a standalone 501(c)(3) entity that is not a subsidiary or affiliate of PRF (an “Independence Event”); and

**WHEREAS**, due to P4L’s independently-managed nature and the possibility that an Independence Event may occur, it is appropriate for PRF and P4L to set forth (a) the terms and conditions under which the UDO functions, assets and liabilities will be transferred to P4L, (b) the terms of PRF’s and P4L’s cooperation with respect to P4L’s development functions and PRF’s ongoing investment management and gift administration functions, and (c) the terms under which the UDO employees will be assigned to work at P4L, with PRF continuing to provide payroll, human resources and benefits management support services to P4L as the employer of record with respect to such employees.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises and undertakings hereinafter set forth, it is mutually understood and agreed as follows:

1. **TERM AND TERMINATION:** The term of this Agreement shall begin on the Effective Date and shall continue until June 30, 2024, unless terminated sooner as provided herein.
  - 1.1 Subject to early termination as provided herein, this Agreement shall automatically renew for successive additional terms of one (1) fiscal year each (each, an “Extension Period”), unless either party provides prior written notice of at least six (6) months to the other party of its intention to terminate this Agreement as of the end of the then current term.
  - 1.2 Either party may, at its option, and without limitation to other rights, terminate this Agreement upon six (6) months’ advance written notice to the other party.
  - 1.3 Upon the occurrence of an Independence Event, this Agreement shall terminate on the second (2<sup>nd</sup>) anniversary of such Independence Event, if not otherwise earlier terminated pursuant to this Section 1.
  - 1.4 In addition, in the event of a party’s material breach or nonperformance of its obligations hereunder, the non-breaching party may terminate this Agreement by giving written notice of such breach or nonperformance to the other party. The party receiving such notice will be given 10 days to respond to any noted deficiencies in performance. Failure to adequately address non-performance within such 10-day period may result in immediate termination by the non-breaching party.

- 1.5 In the event of termination, the parties shall cooperate in good faith to conduct a full accounting of all amounts owed under this Agreement and settle all accounts between them, after giving effect to the amount of any fees advanced but unearned and the amount of “PRF Services” (as hereinafter defined) performed through the effective date of such termination.

## 2. TRANSFER OF UDO TO P4L:

- 2.1 **Dedicated Assignment of Personnel.** On the Effective Date, approximately 300 employees of PRF within UDO and approximately [ \* ] former employees of PAA who were transferred pursuant to the Joint Plan shall be functionally assigned to work at P4L (the “Seconded Employees”) on the same salary and/or wage levels as existed for them immediately prior to the Effective Date. Since PRF will remain the employer of record of the Seconded Employees, the UDO employees will maintain their existing years of service with PRF (and, as applicable, the University), and the former PAA employees will maintain their existing years of services with PAA, in each case for purposes of calculating vacation and sick days. PRF will include the Seconded Employees within the PRF health insurance and other benefit plans to the fullest extent permitted by applicable law and regulations and in accordance with Section 3.3 of this Agreement. P4L shall not be prevented from changing work assignments or titles of the Seconded Employees as it deems necessary in its discretion.
- 2.2 **Transfer of Assets.** On the Effective Date, PRF shall assign to P4L all of its right, title and interest in and to the “Transferred Assets” (as hereinafter defined). “Transferred Assets” shall mean all of PRF's right, title and interest in: (a) the properties, contracts (specifically including the “Dauch Lease,” as hereinafter defined) and other assets of every kind, character and description, whether tangible or intangible, whether real, personal or mixed, whether accrued, contingent or otherwise, and wherever located, used in the UDO functions, including but not limited to those identified in a fixed assets list to be exchanged between the parties on or before the Effective Date, as well as any goodwill associated with such functions; and (b) the “Transferred Assets” defined in the Joint Plan and received by P4L from PAA thereunder. The records associated with the operation of UDO and those received from PAA under the Joint Plan, including, without limitation, all donor and alumni records, are expressly included in the Transferred Assets conveyed hereunder.
- 2.3 **Liabilities.** P4L hereby assumes and agrees to perform or pay (as applicable) all of the “Assumed Liabilities” when and as required to be performed or paid. The “Assumed Liabilities” shall mean: (a) all of the ongoing liabilities associated with contracts or leases (including the Dauch Lease), and debts, operating expenses, taxes, obligations and other liabilities that are incurred by P4L in connection with the Transferred Assets and the operation of UDO to the extent arising or relating to periods after the Effective Date, and (b) the “Assumed Liabilities” defined in the Joint Plan and assumed by P4L from PAA thereunder. PRF shall retain all of the debts, operating expenses, taxes, obligations and other liabilities that are or were incurred by PRF in connection with the UDO-related Transferred Assets and the operation of UDO to the extent arising or relating to periods prior to the Effective Date.

- 2.4 **UDO Dauch Lease.** As of the Effective Date, PRF hereby assigns, and P4L hereby assumes, that certain Lease, by and between the Trustees of Purdue as landlord and PRF as tenant, dated as of January 1, 2014, as amended by Amendment No. 1 dated as of December 16, 2020 (collectively, the “Dauch Lease”). P4L shall keep, perform and fulfill the promises, conditions and agreements of tenant thereunder from and after the Effective Date.
3. **PRF-PROVIDED SERVICES:** This Section 2 describes the services to be provided by PRF hereunder (collectively, the “PRF Services”) and the manner in which the scope of such PRF Services may be adjusted by mutual agreement from time to time.
- 3.1 ***PRF Services—General.*** During the term of this Agreement, PRF shall:
- 3.1.1 provide PRF personnel necessary to ensure the delivery of the PRF Services being performed for P4L’s benefit under this Agreement, including by, among other things, covering the salary, wages, benefits, supplies, and expenses of such PRF personnel (exclusive of the Seconded Employees) in accordance with PRF’s own compensation policies and plans;
  - 3.1.2 provide company infrastructure support to P4L as its wholly-owned subsidiary, until such time as P4L becomes a standalone entity; and
  - 3.1.3 provide such other PRF Services as may be mutually agreed upon between the parties from time to time.
- 3.2 ***PRF Services—PAA Reorganization.*** In connection with the PAA Reorganization, PRF shall:
- 3.2.1 adhere to the terms of the P4L operating agreement, which describes PRF’s limited role with respect to the affairs of P4L;
  - 3.2.2 cooperate with P4L as necessary to comply with the protective provisions described in Section 9(e) of the Joint Plan; and
  - 3.2.3 comply with PRF’s covenant of non-interference set forth in Section 11 of the Joint Plan.
- 3.3 ***PRF Services—Human Resources.*** During the term of this Agreement, PRF shall (either directly or through a payroll company) provide administrative, human resources, benefits management and payroll services with respect to the Seconded Employees, including by permitting such employees to participate in PRF’s health insurance and other benefit plans, at P4L’s expense.
- 3.3.1 Payroll and benefits costs associated with the Seconded Employees shall be invoiced to P4L per PRF’s standard invoicing procedures or drawn directly against the P4L payroll account maintained by PRF, in PRF’s discretion.

- 3.3.2 PRF will collect and remit all payroll taxes for P4L with respect to the Seconded Employees, prepare and file any related payroll reports, and prepare and file W-2 and W-3 forms on P4L's behalf.
    - 3.3.3 Any required Forms 1099s and Form 1096 may be at additional expense and invoiced per PRF's standard terms.
    - 3.3.4 Notwithstanding any provision of this Section 3.3, upon the occurrence and effective as of an Independence Event, the P4L employees will no longer be eligible to participate in PRF's health insurance and other benefit plans.
  - 3.4 ***PRF Services—Coordination with Development Function.*** Although the UDO development functions, assets and personnel are being transferred to P4L pursuant to this Agreement, it will still be necessary for PRF and P4L to cooperate and coordinate their respective activities with respect to the development function for the University during the term of this Agreement. Specifically, and per the University/P4L Services Agreement, once P4L/UDO secures and records a gift or other contribution through fundraising operations and prepares any necessary trust documentation, the funds will be deposited to the appropriate PRF account. PRF shall serve as the University's agent with respect to the receipt and management of such gifts and other contributions that have been made by donors for the benefit of Purdue or one of its schools, colleges, departments or other units (with the exception of gifts made to support specific research programs that are administered as 'voluntary support awards' by the Sponsored Program Services department, as contemplated by University policy II.B.6, as it may be amended or replaced from time to time).
  - 3.5 ***PRF Services—IT and Hosting.*** During the term of this Agreement, PRF shall provide to P4L personnel access, on an as-needed basis, to the following PRF systems, subject to PRF's receiving all appropriate acknowledgements and agreements from such personnel setting forth applicable data access and information security protocols and agreeing to comply with policies designed to segregate and safeguard PRF systems and information: (a) the Integrated Financial and Administrative Solution, and (b) Microsoft Office 365 (for email, calendar, contacts and tasks).
  - 3.6 ***Endowment Fee.*** During the term of this Agreement, PRF shall remit to P4L the "Endowment Fee," as that term is defined in the University/P4L Services Agreement, as and on a cadence directed by the University, but net of the PRF Fee calculated per Section 5 of this Agreement.
4. **P4L-PROVIDED SERVICES.** During the term of this Agreement, P4L shall:
- 4.1 Coordinate with PRF for the deposit of, and deposit to the appropriate PRF account, the gifts or other contributions received through fundraising operations; and
  - 4.2 provide such other services as may be mutually agreed upon between Purdue and PRF from time to time.

5. **FEES; PAYMENT.** P4L shall remit to PRF fees (the “PRF Fee”) for the PRF Services as calculated per this Section 5. The PRF Fee has been calculated to cover PRF’s costs in delivering the PRF Services, net of the value of the P4L-provided services.
- 5.1 Beginning on the Effective Date, the PRF Fee shall be \$[1,671,417.00] per annum, payable in equal monthly installments (in advance) on or about the first day of each month by set-off against the Endowment Fee payable to P4L per Section 3.6 of this Agreement.
- 5.2 For the avoidance of doubt, the PRF Fee includes an amount equal to \$6,740 per annum per each Seconded Employee who was formerly an employee of PAA and who transferred pursuant to the Joint Plan.
- 5.3 The PRF Fee shall be subject to annual adjustment on July 1 of each year, beginning on July 1, 2022, by multiplying the then-current PRF Fee by the “Index Adjustment Multiplier.” The Index Adjustment Multiplier shall be a fraction having as its numerator the CPI-U (not seasonally adjusted), All Urban Consumers, U.S. City Average, 1982/84=100 index published by the U.S. Department of Labor, Bureau of Labor Statistics, immediately prior to July 1 of that year, and the denominator of which is such index published immediately prior to July 1 of the preceding year, provided however that the Index Adjustment Multiplier shall not be less than one (1). (For purposes of illustration, if the PRF Fee for the fiscal year ending June 30, 2022 is \$1,671,417.00, if the index published in June 2022 is 265.123, and if the index published in June 2021 is 261.456, the Index Adjustment Multiplier would be 265.123/261.456, and the PRF Fee for the fiscal year beginning July 1, 2022 would be \$1,694,859.13.)
- 5.4 If, on or after July 1, 2022, P4L’s total employment of full time equivalents (FTEs) grows by more than 10% or contracts by more than 10% during the prior fiscal year (July 1-June 30), then representatives of PRF and P4L shall meet to discuss an appropriate adjustment to the PRF Fee.
- 5.5 P4L shall have the right to terminate the PRF Services described in Section 3.3 and 3.5 of this Agreement (collectively and not separately) without terminating this entire Agreement, upon at least six (6) months’ prior written notice. In the event that P4L terminates such PRF Services, the PRF Fee shall be prorated as of the effective date of such termination and set to zero following such termination, as the value of the remaining PRF Services shall be equivalent to the value of the P4L-provided services thereafter.
6. **WARRANTIES AND INSPECTION:** Each party warrants that all services provided by it under this Agreement shall be performed in a good and workmanlike manner and with that degree of skill and care that such party would normally exercise in performing similar services for itself in the ordinary course of conducting its own business and, in any event, with such degree of skill and care as is consistent with general standards of practice among institutions of higher education and their affiliated foundations and entities. Each party further warrants that all services provided by it shall comply with Purdue’s standards, rules and regulations. Each party shall maintain thorough and complete records of its services performed under this Agreement, which shall be reasonably available for inspection by the other party upon request.

7. **CONFIDENTIALITY:** During the term of this Agreement and thereafter, neither party shall disclose or use for the benefit of anyone other than the other party or Purdue any Restricted Data. For purposes of this Agreement, the term "Restricted Data" shall include, without limitation, confidential or proprietary information, any Social Security Numbers, any Protected Health Information, as that term is defined in 45 C.F.R. §160.103, as amended, of the Health Insurance Portability and Accountability Act (HIPAA) regulations, any Customer Information, as that term is defined in 16 C.F.R. § 314, as amended, of the Gramm-Leach-Bliley Safeguards Rule, any information contained in any Education Records, as that term is defined in 34 C.F.R. §99.3, as amended, of the Family Educational Rights and Privacy Act (FERPA) regulations, and any information protected by any other applicable state or federal law imposing similar privacy or security obligations.
8. **HIPAA BUSINESS ASSOCIATE REQUIREMENTS:** In providing the PRF Services, PRF may have access to Protected Health Information (PHI), as defined in the HIPAA “privacy and security regulations.” In the event PRF ceases to be the employer of record of the P4L personnel and thereafter continues to have access to PHI of such personnel by virtue of providing the PRF Services, PRF will execute a Business Associate Addendum in the form attached hereto as Exhibit A.
9. **SECURITY OF RESTRICTED DATA:** Each party agrees to:
  - 9.1 Protect the security and confidentiality of Restricted Data it receives or accesses in accordance with its information security program and this Agreement and further agrees to comply with the requirements of IC 4-1-10 concerning any social security numbers included in the Restricted Data;
  - 9.2 Limit access to Restricted Data to those employees who have a legitimate business need to know the information;
  - 9.3 Prohibit disclosure of any social security numbers included in the Restricted Data except as expressly permitted by IC 4-1-10;
  - 9.4 Require all of its subcontractors and agents that receive, use or have access to Restricted Data to agree to implement reasonable and appropriate security safeguards to protect it and to agree in writing to the confidentiality and security requirements of this Agreement;
  - 9.5 Understand the requirements of IC 4-1-11 concerning breaches of security and notification of disclosures of social security numbers and personally identifiable information, and to immediately report to Purdue any security incident involving any social security numbers or other Restricted Data of which it becomes aware, and to provide Purdue with all information necessary to permit Purdue to timely comply with the notification provisions of I.C. 4-1-11 and its implementing rules. To the extent PRF is required to make its own notification under law concerning any Restricted Data, PRF agrees to cooperate with Purdue regarding the notification process prior to making such notification;
  - 9.6 Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as

defined in 16 CFR 681.2) or that may arise in the performance of PRF's activities, if PRF has access to customer information from covered accounts under the Red Flag Rules. PRF agrees that policies and procedures to detect relevant "Red Flags" are updated periodically. PRF further agrees to notify Employer of the detection of a Red Flag and to implement reasonable steps to prevent or mitigate identify theft;

- 9.7 Not use any of the other party's Restricted Data for any purpose other than those permitted purposes set forth in this Agreement; and
- 9.8 At the completion of this Agreement, physically or electronically destroy beyond all ability to recover any and all Restricted Data provided to it.
10. **GOVERNING LAW:** This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.
11. **COMPLIANCE WITH GOVERNMENT STATUTES AND REGULATIONS:** Each party warrants and certifies that, in performing the services to be provided by it under this Agreement, it has complied with or will comply with all applicable statutes, rules, regulations and orders of the United States, and any state or political subdivision thereof, including without limitation laws and regulations pertaining to privacy and security of information, labor, wages, hours and other conditions of employment, and applicable price ceilings, if any, and that the services delivered hereunder shall be performed in compliance with the Fair Labor Standards Act.
12. **BANKRUPTCY OR INSOLVENCY:** In the event of any proceedings in bankruptcy or insolvency by or against a party following an Independence Event, or in the event of the appointment (with or without a party's consent) of an assignee for the benefit of creditors or of a receiver on behalf of a party following an Independence Event, the other party may terminate this Agreement forthwith.
13. **LIMITATION OF LIABILITY:** Each party shall give the other party the benefit of its best judgment and efforts in rendering the services required to be performed by it under this Agreement. Except to the extent provided under applicable law, neither party shall be liable to the other party for any act or omission whatsoever of any employee, agent or representative acting on its behalf or for its own acts or omissions in the performance of its services under this Agreement. The provisions of this Section 13 shall survive the termination of this Agreement.
14. **NO THIRD PARTY BENEFICIARIES:** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and their respective successors or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
15. **SURVIVAL:** The confidentiality and security requirements set forth in Sections 7, 8, and 9 of this Agreement shall survive the termination of this Agreement.



16. **NOTICES:** Any notice or other correspondence required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been given if: (a) served personally, (b) sent by email with confirmation of receipt, or (c) sent by first class mail, postage prepaid, to the addresses set forth below or to such other addresses as either party hereto may designate by notice to the other party.

**Purdue Research Foundation, Inc.**

Kurz Purdue Technology Center  
1281 Win Henschel Boulevard  
West Lafayette, IN 47906  
Attn: Scott Seidle, CFO  
Phone: (765) 588-1061  
Email: seidle@prf.org

**Purdue for Life Foundation, LLC**

Dauch Alumni Center  
403 Wood Street  
West Lafayette, IN 47907  
Attn: Matt Folk, President  
Phone: (765) 496-3528  
Email: mdfolk@prf.org

17. **DISPUTE RESOLUTION:**

- 17.1 ***Negotiation.*** Any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort, or statute (a “Dispute”), shall first be resolved through good faith negotiations. Toward this end, the parties shall use their best efforts to settle the Dispute by direct negotiations between party representatives having appropriate settlement authority. If such representatives cannot resolve the Dispute within thirty (30) days, then the matter shall be referred to PRF’s President and P4L’s President, who will meet to resolve the Dispute.
- 17.2 ***Mediation.*** If the matter has not been resolved within sixty (60) days of either party’s initial request for formal negotiation pursuant to the foregoing provision, then either party may terminate the negotiations by written notice to the other party, whereupon the parties shall submit the Dispute to mediation before a mutually agreeable neutral mediator. In initiating and conducting such mediation, the parties shall comply with the provisions of Rule 8 (Optional Early Mediation) of the Rules for Alternative Dispute Resolution (the “ADR Rules”) under the Indiana Rules of Court, as the same may be amended from time to time. The neutral mediator required by the mediation procedure shall be a lawyer mutually selected from the list of registered mediators maintained by the Indiana Supreme Court Commission for Continuing Legal Education under the ADR Rules.
- 17.3 ***Litigation.*** If the Dispute has not been resolved through mediation within ninety (90) days of the above-referenced notice of termination of negotiations (or if the parties are unable to agree to a neutral mediator within such 90-day period), then either party wishing to pursue the Dispute may initiate litigation of the Dispute in a court of competent jurisdiction in Tippecanoe County, Indiana or otherwise in accordance with applicable law. Each party agrees that in any such action or proceeding, the matters shall be tried to a court and not to a jury. In the event any party hereto pursues litigation to enforce this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and court costs.

18. **FURTHER ASSURANCES:** Subject to the terms and conditions of this Agreement, the parties will use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the transactions

contemplated by this Agreement and to ensure the smooth and efficient performance of the services hereunder, including (i) preparing and filing as promptly as practicable with any governmental entity or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations, and other confirmations required to be obtained from any governmental entity or other third party that are necessary, proper or advisable to consummate the transactions contemplated herein. The parties also agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated herein and to vest in P4L good and marketable title to the Transferred Assets. Finally, the parties agree that, as the need may arise from time to time to document more specifically their respective commitments in connection with certain mutually-agreed upon arrangements related to the services provided to each other hereunder, they shall negotiate in good faith and execute and deliver such memoranda of understanding or other instruments as are deemed necessary or appropriate to define and memorialize those commitments.

19. **GENERAL:** If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect. This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein. There are no promises, covenants or undertakings other than those expressly set forth herein. Amendments, modifications or changes of or to this Agreement must be made in writing and signed by a duly authorized representative of both parties. Neither party may assign any rights under this Agreement, except that P4L may assign its rights under this Agreement to a successor as part of an Independence Event. Subject to the foregoing sentence, this Agreement shall be binding upon PRF and P4L and their respective successors and assigns. In performing the services hereunder, each party will act solely as an independent contractor rendering professional services for the other party. Neither party shall have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, or joint venturer or partner between the parties.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

**PURDUE RESEARCH FOUNDATION**

**PURDUE FOR LIFE FOUNDATION, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Brian E. Edelman

Name: Matt D. Folk

Title: President

Title: President & Chief Operating Officer

**FORM OF  
PURDUE UNIVERSITY  
BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum is entered into by and between Purdue University (“Purdue”) and \_\_\_\_\_ (“Business Associate”) (each “Party”, collectively “Parties”).

The Parties have a written agreement, dated \_\_\_\_\_, (“the Primary Agreement”) under which the Business Associate regularly receives, uses and/or discloses Protected Health Information (“PHI”) in its performance of the services described in the Primary Agreement. This Addendum sets forth the obligations and agreements of the Parties relating to compliance with HIPAA Laws (defined below). This Addendum applies to all PHI created or received by Business Associate from Purdue or from another person or entity on behalf of Purdue, and governs how such PHI may be used or disclosed.

The Parties hereby agree as follows:

**1. PERMITTED USES AND DISCLOSURES OF PHI**

1.1 Business Associate shall be permitted to use and/or disclose PHI created or received on behalf of Purdue for all purposes necessary to provide the services and to perform its obligations under the Primary Agreement, provided that said use and/or disclosure complies with the requirements of this agreement and HIPAA Laws. Business Associate acknowledges that the requirements of the HIPAA Laws apply to Business Associate and to Business Associate’s subcontractors and agents to the same extent that they apply to Purdue as a covered entity under HIPAA. Any uses or disclosures of PHI by Business Associate or its subcontractors or agents must be limited, to the extent practicable, to the Limited Data Set, or, if needed to accomplish the purposes of this Addendum, to the minimum necessary to accomplish the intended purpose of such use or disclosure. Business Associate further agrees that it and its subcontractors or agents, to the extent technologically feasible, shall only transmit PHI in an encrypted format in accordance with the specifications of the safeharbor requirements of the HIPAA Laws.

1.2 Subject to paragraph 1.1, Business Associate may use PHI created or received by Business Associate from or on behalf of Purdue, if necessary, for the proper management and administration of Business Associate and to fulfill any current or future legal responsibilities of Business Associate.

1.3 Subject to paragraph 1.1, Business Associate may disclose PHI created or received by Business Associate on behalf of Purdue, if necessary, for the proper management and administration of Business Associate and to fulfill any current or future legal responsibilities of Business Associate, provided:

1.3.1 The disclosure is Required by Law, or

- 1.3.2 Business Associate obtains satisfactory assurances from the person or entity to whom the PHI is disclosed that (i) the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the Business Associate will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.
- 1.3.3. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an individual unless Business Associate has obtained from the individual a valid authorization that includes specification of whether the PHI can be further exchanged for remuneration by the Business Associate.

## **2. RESPONSIBILITIES OF BUSINESS ASSOCIATE WITH RESPECT TO PHI**

2.1 Business Associate agrees not to use or disclose PHI except as expressly permitted by this Addendum, HIPAA Laws, or as Required by Law.

2.2 Business Associate hereby agrees to maintain the security and privacy of all PHI in a manner consistent with HIPAA Laws, and Business Associate further agrees to use appropriate safeguards and security procedures to prevent use or disclosure of PHI not permitted by this Addendum.

2.3 Business Associate shall not disclose PHI to any member of its workforce unless such member of its workforce has a need to use such PHI, and Business Associate has advised such person of Business Associate's privacy and security obligations under this Addendum, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this Addendum or applicable law.

2.4 Business Associate shall require all of its subcontractors and agents that receive or use, or have access to, PHI under this Addendum to comply with HIPAA Laws and to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to the Business Associate pursuant to this Addendum.

2.5. Business Associate agrees to maintain a record of all disclosures of PHI required to be maintained under HIPAA Laws , including disclosures not made for the purposes of this Addendum, and further agrees within ten (10) days of a written request from Purdue, to provide to Purdue such information as is necessary to permit Purdue to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. Business Associate further agrees to comply with the requirements of HITECH to provide Purdue with an accounting of all disclosures made for treatment, payment and health care operations when the HITECH statute requiring such an accounting becomes applicable to Purdue. Purdue agrees to notify Business Associate in advance of the applicability of this requirement.

2.6. Business Associate agrees to report to Purdue any unauthorized use or disclosure of PHI by Business Associate or its workforce, agents or subcontractors and the remedial action taken

or proposed to be taken with respect to such use or disclosure in accordance with the specific provisions of Section 2.10. Business Associate further agrees to take all reasonable steps necessary to mitigate and cure any harmful effects of a breach of PHI.

2.7 Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from Purdue, or created or received by Business Associate on behalf of Purdue, available to the Secretary of the United States Department of Health and Human Services, for purposes of determining Purdue's compliance with HIPAA.

2.8. Within thirty (30) days of a written request, Business Associate shall allow a person who is the subject of PHI, such person's legal representative, or Purdue to have access to and to copy such person's PHI maintained by Business Associate. Business Associate shall provide PHI in the format requested by such person, legal representative, or practitioner unless it is not readily producible in such format, in which case Business Associate will produce the material in a mutually agreeable format. If no format is feasible or agreeable, it shall be produced in standard hard copy format. Business Associate acknowledges that HITECH requires Purdue and Business Associate to provide electronic health records to the individual in electronic format, and Business Associate agrees that to the extent applicable to produce any PHI in electronic format in a manner requested by Purdue or by the individual who has made the request.

2.9 Within ten (10) days of a written request by Purdue, Business Associate shall make available to Purdue PHI received from or on behalf of Purdue for amendment in accordance with 45 C.F.R. § 164.526. Business Associate further agrees to make such amendment to PHI as directed by Purdue within thirty (30) days of a written request by Purdue.

2.10 Business Associate shall implement and document appropriate administrative, physical and technical safeguards in order to preserve the confidentiality, integrity and availability of all PHI and to prevent any unauthorized use or disclosure of PHI, or any breach or security incident, or other material breach or violation of an underlying contract, this Addendum, HIPAA and HITECH involving said PHI. Business Associate shall further:

2.10.1 Establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by 45 C.F.R. § 164.314 of the Security Regulations. Business Associate represents and warrants that its security program is periodically reviewed and appropriate updates are implemented to address any gaps identified in its security program. Business Associate agrees to make its security policies and procedures available to Purdue upon reasonable request.

2.10.2 Require all of its subcontractors and agents that receive, use or have access to PHI to implement reasonable and appropriate security safeguards to protect it from unauthorized use or disclosure, and to report any improper use or disclosure of PHI in the time and manner required of Business Associate herein.

2.10.3 Immediately report to Purdue any unauthorized or improper use or disclosure

of PHI, including without limitation, any security or privacy incident or breach involving the PHI (“Incident”) without unreasonable delay, and not more than twenty-four (24) hours after Business Associate becomes aware of the Incident by Business Associate or its workforce, agents or subcontractors, and to provide Purdue with notice and a report containing all information necessary to permit Purdue to timely comply with HIPAA notification provisions and its implementing rules or any other applicable reporting law, if necessary. Said report shall identify: (i) the known facts and circumstances related to the Incident; (ii) the individuals affected; (iii) the PHI that is known to be the subject of the Incident; (iv) the persons who are known to have information about the Incident; and (v) the corrective action that Business Associate took or will take to mitigate any deleterious effects of the Incident and to prevent future incidents. In addition, Business Associate agrees to provide Purdue with all information reasonably requested by Purdue to conduct its own risk assessment and determination of whether a breach occurred. Business Associate further acknowledges that it is familiar with the requirements of I.C. 4-1-11 *et. seq.* concerning breaches of security and notification of disclosures of social security numbers. To the extent Business Associate must make its own notification involving any disclosure of PHI, Business Associate agrees to cooperate with Purdue regarding the notification process prior to making such notification.

2.10.4 Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as defined in 16 C.F.R. § 681.1) or that may arise in the performance of Business Associate’s activities, if Business Associate has access to information protected under the Red Flag Rules. Business Associate agrees that policies and procedures to detect relevant “Red Flags” are updated periodically. Business Associate further agrees to notify Purdue of the detection of a Red Flag and to implement reasonable steps to prevent or mitigate identity theft.

2.11 Upon reasonable request by Purdue, Business Associate agrees to provide to Purdue necessary policies, procedures or other information that may be reasonably required to confirm Business Associates and/or any agents or subcontractor’s compliance with this Agreement or HIPAA Laws.

### **3. TERM AND TERMINATION**

3.1 This Addendum shall commence as of the date first signed below, and the obligations set forth in this Addendum shall continue in effect as long as Business Associate uses, discloses, creates, receives or otherwise possesses any PHI created or received from or on behalf of Purdue and until all such PHI is destroyed or returned to Purdue pursuant to the terms of this Addendum.

3.2 Purdue may immediately terminate this Addendum and the Primary Agreement if Purdue determines that the Business Associate has breached a material term of this Addendum. Alternatively, Purdue may choose to: (i) provide Business Associate an opportunity to cure said

alleged material breach to the satisfaction of Purdue within ten (10) days. The Business Associate's failure to cure shall be grounds for immediate termination of this Addendum. Purdue's remedies under this Addendum are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

3.3. Upon termination of this Addendum, Business Associate shall return or destroy, by rendering the PHI unusable, unreadable or undecipherable or beyond the ability to recover, all PHI received from Purdue, or created or received by Business Associate on behalf of Purdue and that Business Associate maintains in any form, and Business Associate shall retain no copies of such information. If the parties mutually agree that return or destruction of PHI is not feasible, Business Associate shall continue to maintain the security and privacy of such PHI in a manner consistent with the obligations of this Addendum and as required by applicable law, and shall limit further use of the information to those purposes that make the return or destruction of the information infeasible. The duties hereunder to maintain the security and privacy of PHI shall survive the termination of this Addendum.

#### **4. AMENDMENT TO ADDENDUM**

Purdue may amend this Addendum by providing ten (10) days prior written notice to Business Associate in order to maintain compliance with Indiana or Federal laws or regulations. Such amendment shall be binding upon Business Associate at the end of the ten (10) day period and shall not require the consent of Business Associate. Business Associate may elect to terminate the Addendum within the ten (10) day period, but Business Associate's obligations to maintain the security and privacy of PHI as required herein shall survive such termination. Purdue and Business Associate may otherwise amend this Addendum by mutual written agreement. Business Associate may not amend this Agreement without the express written consent of Purdue.

#### **5. INDEMNITY**

Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Purdue and his/her respective employees, directors, and agents ("Indemnitees") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney's fees, including at trial and on appeal) asserted or imposed against any Indemnitees arising out of the acts or omissions of Business Associate or any subcontractor of or consultant of Business Associate or any of Business Associate's employees, directors, or agents related to the performance or nonperformance of this Addendum

#### **6. NO THIRD PARTY BENEFICIARIES**

Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

#### **7. LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR



NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

## 8. DEFINITIONS

8.1 HIPAA Laws. “HIPAA Laws” for purposes of this Agreement shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, and the Security Regulations (45 C.F.R. Parts 160, 162, and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health (“HITECH”), the Omnibus Rule of 2013 (“Omnibus Rule”), and the Indiana statutes governing social security numbers, I.C. 4-1-10-1 *et. seq.* and I.C. 4-1-11-1 *et. seq.*

8.2 Limited Data Set. “Limited Data Set” shall have the meaning set out in 45 C.F.R. § 164.514(e)(2), as amended from time to time.

8.3 Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the meaning set out in 45 C.F.R. §160.103, as amended or revised from time to time. The term shall also include any social security numbers provided or made available to Business Associate.

8.4 Required by Law. “Required by Law” shall have the meaning set forth in 45 C.F.R. §164.103, as amended or revised from time to time.

### PURDUE UNIVERSITY

### BUSINESS ASSOCIATE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SERVICES AGREEMENT  
BETWEEN PURDUE FOR LIFE FOUNDATION, LLC  
AND THE TRUSTEES OF PURDUE UNIVERSITY**

This Services Agreement (the “Agreement”) is made and entered into as of the 31<sup>st</sup> day of March, 2021, to be effective as of April 1, 2021 (the “Effective Date”), by and between PURDUE FOR LIFE FOUNDATION, LLC, an Indiana nonprofit limited liability company (hereinafter referred to as “P4L”), and THE TRUSTEES OF PURDUE UNIVERSITY, a body corporate organized and existing under the laws of the State of Indiana for the purpose of operating Purdue University (hereinafter referred to as “Purdue” or the “University”).

**WITNESSETH**

**WHEREAS**, since its founding in 1869 as the land grant university for the State of Indiana under the Morrill Land Grant Act of 1862, Purdue has become one of the nation’s leading public research universities and has expanded from its historic West Lafayette campus to a multi-campus system, through which it serves the people of Indiana, the nation and the world through education, research and outreach; and

**WHEREAS**, responsibility for making rules and regulations to govern Purdue is vested in its Board of Trustees (the “Trustees”), as prescribed in Section 21-23-3 of the Indiana Code (“IC”); and

**WHEREAS**, Purdue Research Foundation (“PRF”) was created in 1930 as a separately incorporated nonprofit entity for the primary purpose of supporting and assisting the Trustees in the conduct of the affairs of the University and the accomplishment of its educational purposes; and

**WHEREAS**, P4L was created as a nonprofit limited liability company with PRF as its sole member, such that P4L is a disregarded entity that shares PRF’s tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); and

**WHEREAS**, since 2014, PRF has been performing the direct development functions for the University through the University Development Office (“UDO”), but, pursuant to that certain Contribution and Services Agreement of even date herewith by and between PRF and P4L (the “Contribution and Services Agreement”), PRF is, on the Effective Date: (i) contributing the UDO functions, assets and liabilities to P4L, and (ii) functionally assigning the UDO personnel to work at P4L—all as part of a reorganization process to consolidate all outward-facing engagement, alumni member services, fundraising and stewardship efforts within P4L; and

**WHEREAS**, P4L’s purpose is to support the University through the foregoing engagement, alumni, fundraising and stewardship function and, in light of its purpose and its role as a supporting organization to the University, P4L is well-positioned to provide to Purdue direct development services, which are vital to the ongoing success of the University’s missions of advancing learning, discovery, engagement, and student affordability and accessibility; and

**WHEREAS**, Purdue has one of the nation’s largest cyberinfrastructure platforms, which is administered through a centralized information technology resource center (“ITaP”) that enables Purdue to provide efficient database, computing and electronic communications services to users having access to its network, and P4L will be assisted in its functions by having access to certain platforms and databases maintained by the University; and

**WHEREAS**, P4L may be called upon from time to time by a Purdue unit to market educational services of the University to the Purdue alumni base, and the University desires to ensure that such P4L services will conform with U.S. Department of Education regulations and interpretive guidance regarding incentive compensation.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises and undertakings hereinafter set forth, it is mutually understood and agreed as follows:

1. **TERM AND TERMINATION:** The term of this Agreement shall begin on the Effective Date and shall continue until June 30, 2024, unless terminated sooner as provided herein.

1.1 Subject to early termination as provided herein, this Agreement shall be reviewed on an annual basis (generally in the calendar quarter prior to the end of the then current term) and shall automatically renew for successive additional terms of one (1) fiscal year each (each, an “Extension Period”), unless either party provides prior written notice to the other party of its intention to terminate this Agreement as of the end of the then current term.

1.2 Either party may, as its option, and without limitation to other rights, terminate this Agreement upon ninety (90) days’ advance written notice to the other party.

1.3 In addition, in the event of a party’s material breach or nonperformance of its obligations hereunder, the non-breaching party may terminate this Agreement by giving written notice of such breach or nonperformance to the other party. The party receiving such notice will be given 10 days to respond to any noted deficiencies in performance. Failure to adequately address non-performance within such 10-day period may result in immediate termination by the non-breaching party.

1.4 In the event of termination, the parties shall cooperate in good faith to conduct a full accounting of all amounts owed under this Agreement and settle all accounts between them, after giving effect to the amount of any fees advanced but unearned and the amount of Services performed through the effective date of such termination. Further, upon delivery of any notice of termination pursuant to Section 1, the development function recovery provisions described in Section 5 shall control the disposition of the UDO functions, assets and personnel.

2. **SCOPE:** This Section 2 describes the services to be provided by the parties hereunder (collectively, the “Services”) and the manner in which the scope of such Services may be adjusted from time to time.

2.1 ***P4L-Provided Services.*** During the term of this Agreement, P4L shall:

2.1.1 provide P4L personnel necessary to ensure the delivery of the Services being performed for Purdue’s benefit under this Agreement, including by, among other things, covering the salary, wages, benefits, supplies, and expenses of such P4L personnel in accordance with P4L’s own compensation policies and plans;

- 2.1.2 provide ongoing support, reporting, and processing of gifts made by donors for the University's benefit, whether through P4L, in the name of the "Purdue Foundation," or otherwise;
- 2.1.3 document and manage donor relationships in connection with trusts and other structured or planned gifts made in support of Purdue, including charitable remainder trusts, while coordinating with PRF in connection with the latter's accounts management, distribution processing and reporting services related to such gifts;
- 2.1.4 conduct, manage and direct fundraising operations consistent with the goals established by P4L/UDO in consultation with Purdue, and, in this connection:
  - (a) serve as Purdue's agent with respect to the receipt of gifts and other contributions that have been made by donors for the benefit of Purdue or one of its schools, colleges, departments or other units;
  - (b) once P4L/UDO secures and records a gift or other contribution through fundraising operations and prepares any necessary trust documentation, deposit the funds into the appropriate PRF account, as directed by PRF, as PRF will continue to serve as the University's agent with respect to management and investment of such gifts and other contributions;
  - (c) notwithstanding the foregoing, to the extent that P4L receives gifts made to support specific research programs that are administered as 'voluntary support awards' by the Sponsored Program Services department, as contemplated by University policy II.B.6, as it may be amended or replaced from time to time, P4L shall, after preparing any necessary documentation, deposit the funds into the appropriate account, as directed by Sponsored Program Services.
- 2.1.5 support alumni engagement and the development functions through "Alumni Engagement," as that term is defined in the Joint Plan and Reorganization Agreement and related agreements (or the Letter of Intent with respect thereto), whereby the University, PRF, P4L and Purdue Alumni Association, Inc. ("PAA") have reached agreement on a collaborative approach to consolidate the University development and alumni engagement functions in P4L (the "PAA Reorganization").
- 2.1.6 provide such other Services as may be mutually agreed upon between P4L and Purdue from time to time, subject to Section 6, below.

2.2 ***Purdue-Provided Services.*** During the term of this Agreement, Purdue shall:

- 2.2.1 provide information technology support Services through ITaP, based on such needs, commitments and service levels as may be mutually agreed upon from time to time between P4L and Purdue and after taking into account any such services that are provided to P4L by PRF, to include (i) a range of services for the management of P4L data, systems and support, including without

limitation application development and maintenance, application interfaces, desktop support, database administration, Web hosting, server administration, backups, monitoring, operational support for hardware and operating systems, network file storage, and logon and security services, as well as (ii) access to the applications and platforms identified on Exhibit A (it being understood that such Exhibit may be amended or updated from time to time based on the parties' mutual agreement, as memorialized in a writing between the parties);

2.2.2 provide such other Services as may be mutually agreed upon between Purdue and P4L from time to time.

3. **PAYMENT:** The fee payable to P4L for its Services provided to Purdue under this Agreement has been designed to cover P4L's costs in providing its Services, subject to: (i) the recognition of P4L's mission of serving as a supporting organization to Purdue, and (ii) the recognition of the value of the Services rendered by Purdue hereunder.

3.1 The amount of the fee payable to P4L (the "Endowment Fee"), which shall be net of set-offs for the value of the Services to Purdue hereunder, shall be calculated as follows:

3.1.1 In fourth fiscal quarter of each fiscal year, PRF will share with Purdue and P4L the value of the total Purdue Endowments for the fiscal year beginning on the next following July 1 (referred to herein as that next fiscal year's "Endowment Value"), which is based on the average value at the end of each of the 12 calendar quarters ending on the last day of the preceding fiscal year. (For purposes of illustration, in Spring 2021, the Endowment Value for the fiscal year ending June 30, 2022 will be based on the average of the endowment values at the end of each of the 12 calendar quarters ending on June 30, 2020.) For purposes of this Agreement the term "Purdue Endowments" includes the endowment allocations of Purdue University Fort Wayne ("Purdue Fort Wayne") and Purdue University Northwest ("Purdue Northwest") but excludes the value of any endowments they hold separately.

3.1.2 Based on an "Administrative Fee Percentage" as determined by Purdue and approved by the Trustees (currently 1.2% as of the Effective Date), a maximum fee allocation for that next fiscal year is determined by multiplying the Endowment Value by such Administrative Fee Percentage (the "Max System Allocation").

3.1.3 The Max System Fee for the next fiscal year includes the maximum fee allocations for Purdue Fort Wayne, Purdue Northwest and P4L, which will be individually determined as follows: Purdue Fort Wayne's maximum fee allocation ("PFW Max Allocation") for the next fiscal year is determined based on the Administrative Fee Percentage multiplied by the actual value of the Purdue Fort Wayne endowment allocation as of June 30 of the preceding fiscal year. Purdue Northwest's maximum fee allocation ("PNW Max Allocation") for the next fiscal year is determined based on the Administrative Fee Percentage multiplied by the actual value of the Purdue Northwest endowment allocation as of June 30 of the preceding fiscal year. P4L's maximum fee

allocation ("P4L Max Allocation") for the next fiscal year will be the Max System Allocation less the PFW Max Allocation and the PNW Max Allocation. P4L shall use such P4L Max Allocation to budget appropriately for such next fiscal year.

3.1.4 P4L's fee (the "P4L Fee") for each fiscal year shall be the amount that P4L actually spent providing Services during such fiscal year hereunder, not to exceed the P4L Max Allocation without Purdue's prior written consent.

3.2 In each fiscal year, P4L shall be paid 1/12<sup>th</sup> of the P4L Max Allocation at the beginning of each month of such fiscal year; provided, however, that toward the end of the fiscal year, P4L shall work with PRF to document its total expenses in rendering the P4L-provided Services during such fiscal year, and the final monthly remittances to P4L in such fiscal year shall be adjusted and trued-up such that P4L is paid only the total P4L Fee for such fiscal year.

3.3 The Endowment Fee is in addition to any income received by P4L in exchange for its operations and alumni engagement activities and services pursuant to the agreements contemplated by the PAA Reorganization or for development services provided from time to time to Purdue Fort Wayne, Purdue Northwest or Purdue University Global.

3.4 Purdue may change the Administrative Fee Percentage at any time on not less than ninety (90) days' prior written notice.

4. **WARRANTIES AND INSPECTION:** Each party warrants that all Services provided by it under this Agreement shall be performed in a good and workmanlike manner and with that degree of skill and care that such party would normally exercise in performing similar services for itself in the ordinary course of conducting its own business and, in any event, with such degree of skill and care as is consistent with general standards of practice among institutions of higher education and their affiliates. P4L shall maintain thorough and complete records of its Services performed for Purdue under this Agreement as well as the costs related to such Services. P4L agrees to cooperate with Purdue in any audit or review relating to the provision of Services pursuant to this Agreement. Purdue shall have the right, upon reasonable notice to P4L, to audit and inspect P4L's books and records in connection with the P4L-provided Services under this Agreement.

5. **DEVELOPMENT FUNCTION RECOVERY RIGHTS; RECORDS AND WORK PRODUCT:** Upon delivery of a notice of termination of this Agreement pursuant to Section 1 (or any of its subsections) of this Agreement, and at Purdue's option, the parties shall immediately negotiate in good faith of the no-cost transfer of the development functions being performed by UDO or its successor organization, including the associated assets, personnel, records and contracts (including leases), to the University or its designated recipient. It is understood that all work product produced or created by P4L in the course of performing the P4L-provided Services under this Agreement for Purdue's benefit shall be deemed a "work made for hire," the right, title and interest in which shall reside in Purdue. P4L will execute any necessary confirmatory assignments to Purdue to effectuate the foregoing.

6. **ADDITIONAL MARKETING SERVICES ON BEHALF OF PURDUE UNITS:** From time to time, P4L may be engaged by units of the University to market to the Purdue alumni base education services, such as non-credit courses (either directly or through gift cards) or graduate degree programs. In providing such services, P4L shall ensure that it does not cause the University to violate U.S. regulations that prohibit commission-based recruiting of students eligible for financial aid by observing the following:
  - 6.1 P4L shall restrict its activities to broad information dissemination and advertising, and refrain from targeted information dissemination or solicitations to individuals that are eligible for federal financial aid;
  - 6.2 P4L shall not compensate any employee based upon, or pay any bonus related to, revenue or enrollment production of students/learners for Purdue programs; and
  - 6.3 Each such arrangement shall be reviewed and approved by the University's Office of Legal Counsel prior to implementation.
7. **CONFIDENTIALITY:** During the term of this Agreement and thereafter, P4L shall not disclose or use for the benefit of other than Purdue any Restricted Data. For purposes of this Agreement, the term "Restricted Data" shall include, without limitation, confidential or proprietary information, any Social Security Numbers, any Protected Health Information, as that term is defined in 45 C.F.R. §160.103, as amended, of the Health Insurance Portability and Accountability Act (HIPAA) regulations, any Customer Information, as that term is defined in 16 C.F.R. § 314, as amended, of the Gramm-Leach-Bliley Safeguards Rule, any information contained in any Education Records, as that term is defined in 34 C.F.R. §99.3, as amended, of the Family Educational Rights and Privacy Act (FERPA) regulations, and any information protected by any other applicable state or federal law imposing similar privacy or security obligations. The parties acknowledge and agree that, as a private company, P4L has the authority and obligation to keep its own records and data confidential in accordance with applicable law. It is expressly acknowledged that P4L is not an agency of the State of Indiana and is thus not subject to regulations of the Indiana State Board of Accounts, the requirements of the Indiana Access to Public Records Act, or any other requirements applicable to public agencies.
8. **SECURITY OF RESTRICTED DATA:** P4L represents and warrants that it has and maintains (either directly or through PRF) a written comprehensive information security program containing appropriate administrative, technical and physical safeguards for the security and protection of Restricted Data. P4L further represents and warrants that its security program is periodically reviewed, and appropriate updates are implemented, to address any gaps identified in its security program. P4L agrees to make its security policies and procedures available to Purdue upon reasonable request.
  - 8.1 P4L expressly agrees to:
    - 8.1.1 Protect the security and confidentiality of Restricted Data it receives or accesses in accordance with its information security program and this Agreement and further agrees to comply with the requirements of IC 4-1-10 concerning any social security numbers included in the Restricted Data.

- 8.1.2 Limit access to Restricted Data to those employees who have a legitimate business need to know the information.
- 8.1.3 Prohibit disclosure of any social security numbers included in the Restricted Data except as expressly permitted by IC 4-1-10.
- 8.1.4 Require all of its subcontractors and agents that receive, use or have access to Restricted Data to agree to implement reasonable and appropriate security safeguards to protect it and to agree in writing to the confidentiality and security requirements of this Agreement.
- 8.1.5 Understand the requirements of IC 4-1-11 concerning breaches of security and notification of disclosures of social security numbers and personally identifiable information, and to immediately report to Purdue any security incident involving any social security numbers or other Restricted Data of which it becomes aware, and to provide Purdue with all information necessary to permit Purdue to timely comply with the notification provisions of I.C. 4-1-11 and its implementing rules. To the extent P4L is required to make its own notification under law concerning any Restricted Data, P4L agrees to cooperate with Purdue regarding the notification process prior to making such notification.
- 8.1.6 Implement reasonable policies and procedures designed to detect and provide appropriate response to relevant “Red Flags” that identity theft may be occurring (as defined in 16 CFR 681.2) or that may arise in the performance of P4L’s activities, if P4L has access to customer information from covered accounts under the Red Flag Rules.
- 8.2 P4L represents and warrants that it will not use any of Purdue’s Restricted Data for any purpose other than those permitted purposes set forth in this Agreement.
- 8.3 At the completion of this Agreement, P4L will physically or electronically destroy beyond all ability to recover any and all Restricted Data provided to it. This includes any and all copies of the data such as backup copies created at any P4L site.
- 9. **GOVERNING LAW:** This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.
- 10. **COMPLIANCE WITH GOVERNMENT STATUTES AND REGULATIONS:** Each party warrants and certifies that, in the performance of the Services to be provided by it under this Agreement, it has complied with or will comply with all applicable statutes, rules, regulations and orders of the United States, and any state or political subdivision thereof, including without limitation laws and regulations pertaining to privacy and security of information, labor, wages, hours and other conditions of employment, and applicable price ceilings, if any, and that the Services delivered hereunder shall be performed in compliance with the Fair Labor Standards Act.



11. **INDEMNIFICATION:** P4L agrees to indemnify Purdue and hold it harmless from and against all liability, losses, damages, claims, liens, and expense (including reasonable legal fees) arising out of or connected with the Services performed by P4L hereunder, excepting only such liability as may result solely from the acts of negligence of Purdue or its employees. P4L shall, at the request of Purdue, undertake to defend any and all suits and to investigate and to defend any and all claims, whether justified or not, if such claim or suit be against Purdue, the Trustees, or their respective officers, agents servants, and employees; provided, however, that P4L may not settle any claims against Purdue without Purdue's prior written consent.
12. **BANKRUPTCY OR INSOLVENCY:** In the event of any proceedings in bankruptcy or insolvency by or against PSL, or in the event of the appointment (with or without P4L's consent) of an assignee for the benefit of creditors or of a receiver on behalf of P4L, Purdue may terminate this Agreement forthwith.
13. **LIMITATION OF LIABILITY:** Each party shall give the other party the benefit of its best judgment and efforts in rendering the Services required to be performed by it under this Agreement. Except to the extent provided under applicable law, neither party shall be liable to the other party for any act or omission whatsoever of any employee, agent or representative acting on its behalf or for its own acts or omissions in the performance of its Services under this Agreement. The provisions of this Section 13 shall survive the termination of this Agreement.
14. **NONDISCRIMINATION:** P4L, or its subcontractor(s), if any, shall not discriminate against any qualified employee or applicant for employment in the performance of this Agreement, with respect to hire, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, age, national origin or ancestry, disability or status as a disabled or Vietnam era veteran or any other basis prohibited by applicable law. P4L, or its subcontractor(s), if any, agrees to comply with all the provisions contained in Executive Orders No. 11246 and No. 11375, the Equal Employment Opportunity Clause requirements as set forth at 41 CFR 60-1.4, 41 CFR 60-250.22 and 41 CFR 60-741.5(a), which are hereby incorporated by reference and made a part hereof, and the nondiscrimination mandates of the Indiana Civil Rights Law as presently codified at Ind. Code § 22-9-1-1 *et seq.* As used therein the word "contractor" shall be deemed to mean "P4L," and the word "contract" shall refer to this Agreement. In addition, P4L shall cause the Equal Opportunity Clauses references above to be included in their subcontracts or purchase orders hereunder unless exempted by rules, regulations and orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended.
15. **NO THIRD PARTY BENEFICIARIES:** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and their respective successors or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
16. **SURVIVAL:** The confidentiality and security requirements set forth in Sections 7 and 8 of this Agreement shall survive the termination of this Agreement.

17. **NOTICES:** Any notice or other correspondence required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been given if: (a) served personally, (b) sent by email with confirmation of receipt, or (c) sent by first class mail, postage prepaid, to the addresses set forth below or to such other addresses as either party hereto may designate by notice to the other party.

**Purdue University**  
Office of the Treasurer  
610 Purdue Mall  
West Lafayette, IN 47907  
Attn: Christopher Ruhl, Treasurer  
Phone: (765) 496-6844  
Email: ruhlc@purdue.edu

**Purdue for Life Foundation, LLC**  
Dauch Alumni Center  
403 Wood Street  
West Lafayette, IN 47907  
Attn: Matt Folk, President  
Phone: (765) 496-3528  
Email: mdfolk@prf.org

18. **DISPUTE RESOLUTION:**

- 18.1 ***Negotiation.*** Any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort, or statute (a “Dispute”), shall first be resolved through good faith negotiations. Toward this end, the parties shall use their best efforts to settle the Dispute by direct negotiations between their representatives having appropriate settlement authority. If such representatives cannot resolve the Dispute within thirty (30) days, then the matter shall be referred to P4L’s President and Purdue’s Treasurer, who will meet to resolve the Dispute.
- 18.2 ***Mediation.*** If the matter has not been resolved within sixty (60) days of either party’s initial request for formal negotiation pursuant to the foregoing provision, then either party may terminate the negotiations by written notice to the other party, whereupon the parties shall submit the Dispute to mediation before a mutually agreeable neutral mediator. In initiating and conducting such mediation, the parties shall comply with the provisions of Rule 8 (Optional Early Mediation) of the Rules for Alternative Dispute Resolution (the “ADR Rules”) under the Indiana Rules of Court, as the same may be amended from time to time. The neutral mediator required by the mediation procedure shall be a lawyer mutually selected from the list of registered mediators maintained by the Indiana Supreme Court Commission for Continuing Legal Education under the ADR Rules.
- 18.3 ***Litigation.*** If the Dispute has not been resolved through mediation within ninety (90) days of the above-referenced notice of termination of negotiations (or if the parties are unable to agree to a neutral mediator within such 90-day period), then either party wishing to pursue the Dispute may initiate litigation of the Dispute in a court of competent jurisdiction in Tippecanoe County, Indiana or otherwise in accordance with applicable law. Each party agrees that in any such action or proceeding, the matters shall be tried to a court and not to a jury. In the event any party hereto pursues litigation to enforce this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and court costs.

19. **FURTHER ASSURANCES:** Subject to the terms and conditions of this Agreement, the parties will use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to ensure the smooth and efficient

performance of the Services hereunder, including (i) preparing and filing as promptly as practicable with any governmental entity or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations, and other confirmations required to be obtained from any governmental entity or other third party that are necessary, proper or advisable. Finally, the parties agree that, as the need may arise from time to time to document more specifically their respective commitments in connection with certain mutually-agreed upon arrangements related to the Services provided to each other hereunder, they shall negotiate in good faith and execute and deliver such memoranda of understanding or other instruments as are deemed necessary or appropriate to define and memorialize those commitments (it being understood that The Trustees of Purdue University may cause such memoranda of understanding or other instruments to be entered into in the name of the University).

20. **GENERAL:** If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect. This Agreement contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings other than those expressly set forth herein. Amendments, modifications or changes of or to this Agreement must be made in writing and signed by a duly authorized representative of both parties. P4L may not assign any rights under this Agreement. Subject to the foregoing sentence, this Agreement shall be binding upon Purdue and P4L, their successors and assigns. In performing the Services hereunder, each party will act solely as an independent contractor rendering professional services for the other party. Neither party shall have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, or joint venturer or partner between the parties, it being understood that P4L is an independent entity, separately organized and governed in accordance with its own constitutive documents.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

**THE TRUSTEES OF PURDUE UNIVERSITY**

**PURDUE FOR LIFE FOUNDATION, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Christopher Ruhl

Name: Matt D. Folk

Title: Treasurer and  
Chief Financial Officer

Title: President & Chief Operating Officer

By signing below, PRF has joined this Agreement solely for the purpose of acknowledging and agreeing to its role and responsibilities in Section 3 of this Agreement.

**PURDUE RESEARCH FOUNDATION**

By: \_\_\_\_\_

Name: Scott Seidle

Title: Chief Financial Officer  
& Treasurer

Purdue-Provided Platforms, Applications and Data Feeds/Files

- Bitly (URL shortening/tracking tool)
- Cognos
- Creative Cloud (Adobe)
- Cybersource
- Dataset Utils (data transfer tool)
- DUO (single sign-on/MFA)
- Financial Aid (endowments and scholarships)
- FourWinds (signage)
- Google 360 (analytics, advertisement, web tools suite)
- Litmus (web analytics)
- Oracle tables (Oracle storage of legacy databases)
- Paciolan (athletics ticketing)
- Perceptive Content (document imaging/workflow)
- PL/SQL Developer (database management and query)
- Reply by (athletics texting tool)
- Tableau (reporting)
- UC4 (job scheduling)
- WordPress (CMS)
- Data feeds/files from
  - Banner (student, degree, email)
  - PUID
  - SAP (GL and SuccessFactors)
  - Paciolan (athletics ticketing)
  - COEUS (grant management)
  - Office of Institutional Research
  - Office of Industrial Partnerships
  - United Way Retiree
  - Convocations (ticketing)
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Subject to its receipt of all appropriate acknowledgements and agreements from P4L personnel setting forth applicable data access and security protocols and agreeing to comply with policies designed to segregate and safeguard all Purdue systems and information that are not related to the P4L-provided Services hereunder, Purdue shall provide P4L personnel with access to the above-referenced platforms, applications and data feeds/files to the extent necessary for P4L to perform such P4L-provided Services.