Colorado School of Mines

**Technical Services Agreement**

1. **Introduction**

This Technical Services Agreement (the “Agreement”), effective as of INSERT DATE (the “Effective Date”) by and between the Board of Trustees of the Colorado School of Mines, for and on behalf of the Colorado School of Mines, located at 1500 Illinois Street, Golden, Colorado 80401, Department of INSERT DEPT/AUXILIARY (hereinafter referred to as the “SCHOOL”), a public institution of higher education, and INSERT COMPANY NAME, located at INSERT COMPANY ADDRESS (hereinafter referred to asCUSTOMER) is made under the following terms.

2. **Scope of Work Description**

1. The SCHOOL will perform the following technical services (the “Technical Services”):

INSERT SCOPE

1. The SCHOOL will provide the following deliverables (the “Deliverables”):

INSERT DELIVERABLES.

3. **Term**

The SCHOOL will complete the Technical Services and provide the Deliverables to CUSTOMER within 30 days of receipt of materials to be analyzed (the “Due Date”). The term of this Agreement shall be for a period of three (3) months, beginning on the Effective Date. This term of this Agreement may be extended by mutual written agreement of the parties.

4. **Compensation**

CUSTOMER agrees to compensate SCHOOL to cover the cost of all direct labor, supervision, supplies, materials, and other operating and incidental expenses necessary for the satisfactory completion of the Technical Services and Deliverables as per the fee schedule below. The maximum cost of the Technical Services and Deliverables paid by CUSTOMER to SCHOOL is INSERT RATE (the “Maximum Cost”).

INSERT PRICING SCHEDULE

SCHOOL agrees to provide CUSTOMER with an invoice for the Technical Services completed at the request of CUSTOMER. SCHOOL reserves the right to require CUSTOMER to prepay or submit a deposit prior to providing Technical Services. Although payment is generally requested at the completion of a project, SCHOOL reserves the right to send CUSTOMER invoices on a monthly or periodic basis for lengthy projects and specific services that have been requested.

5. **Payments**

a) Payments will be made by CUSTOMER to SCHOOL within thirty (30) days of receipt of an invoice.

1. Payments shall be submitted to SCHOOL at the following address:

Colorado School of Mines

INSERT DEPT/AUXILIARY

1500 Illinois Street

 Golden, Colorado 80401

c) Each payment must reference the Agreement for Services Number shown above.

6. **Failure to Pay**

If payment is not received from CUSTOMER when due, the full account balance may be accelerated. SCHOOL may also impose a FINANCE CHARGE computed at a periodic monthly rate of 1% per month on the balance or an ANNUAL PERCENTAGE RATE (“APR”) of 12% when computed from the billing date. The unpaid account may be referred for collection, and CUSTOMER agrees to pay all collection costs and reasonable attorney’s fees if SCHOOL must take action to recover any past due amounts owing the SCHOOL.

7. **Duties of SCHOOL**

SCHOOL shall provide facilities, including office, laboratory, equipment and field space, required for the Technical Services to be completed under this Agreement. The SCHOOL shall provide reasonable efforts to perform the Technical Services requested within the projected costs and time period indicated in this Agreement. In the event the SCHOOL’S costs exceed the Maximum Cost per sample or in the event the Technical Services and Deliverables cannot be completed by the Due Date, in each case due to circumstances beyond the control of the SCHOOL, SCHOOL will notify CUSTOMER as soon as reasonably possible and CUSTOMER shall have the option of (i) terminating this Agreement, without making any payment to SCHOOL other than for any Deliverables previously completed for any samples, or (ii) continuing the Agreement and agreeing to an increase in the Maximum Cost per sample or an extension of the Due Date. SCHOOL shall not exceed the Maximum Cost per sample without obtaining CUSTOMER’s prior written consent. The parties understand and agree that the Technical Services to be performed is limited to reporting on the results obtained and shall not include any intellectual contributions of the School.

8. **NO WARRANTY**

The Deliverables and the Technical Services completed under this Agreement are believed to be reliable, but no representations, guarantees or warranties of any kind are made as to their accuracy, suitability for particular applications or the results to be obtained. CUSTOMER should determine independently whether results obtained from the Technical Services completed under this Agreement are suitable for the particular use intended by CUSTOMER. SCHOOL DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Ownership Rights**

All Deliverables and results provided to CUSTOMER by SCHOOL under the terms of this Agreement are the sole property of CUSTOMER and nothing in this Agreement shall be construed as granting to SCHOOL any right or license under any of CUSTOMER’s present or future patent rights, or as granting to SCHOOL any right or license to use for any purpose other than those purposes expressly stated herein any of the Confidential Material or results received or discovered by SCHOOL in connection with performance of the Technical Services. Any improvements of methodology, discoveries, inventions, copyrightable work, equipment, or process developed solely by SCHOOL during the course of this Agreement and which can be used independently of this Agreement (the “Improvements”) shall be the sole property of SCHOOL so long as no Deliverables to CUSTOMER are incorporated into or comprise any part of the Improvements.

10. **Liability**

Each party agrees to accept the responsibility for claims for injury or damage to any person or persons or property that arise out of that party’s negligent acts or omissions or willful misconduct in connection with this Agreement. Each party further agrees that the other party shall not be liable for damages arising solely from injuries or damages sustained by any person or persons or property resulting from its own negligent performance or omission or willful misconduct under this Agreement.

11. **Nature of Relationship**

SCHOOL is an independent contractor and shall not act as an agent for CUSTOMER, nor shall SCHOOL be deemed to be an employee of CUSTOMER for any purposes whatsoever. Neither party shall enter into any agreement or incur any obligations on the other’s behalf, or commit the other in any manner without the other’s prior written consent.

12. **No Expert Testimony**

CUSTOMER warrants that services are not sought for the purposes of admitting the results as evidence in litigation. CUSTOMER acknowledges that the SCHOOL does not provide expert witness services. CUSTOMER agrees not to call any SCHOOL employee as an expert witness as a result of the Technical Services rendered under this Agreement.

13. **Confidential Material**

(a) “Confidential Material" includes CUSTOMER's trade secrets, pending patent applications, invention disclosures, blue prints, documents, spreadsheets, samples, plans, engineering specifications, models, customers, suppliers, distributors, licensees, marketing studies, profits, costs, pricing, tooling, process descriptions, manufacturing processes, and all other material, whether oral, written or electronic, that CUSTOMER provides to SCHOOL regardless of whether or not such material is marked or identified as “confidential” at the time of disclosure to SCHOOL or at any time thereafter.

“Confidential Material” shall not include any material that:

A. Was rightfully possessed by the SCHOOL prior to its receipt from CUSTOMER;

B. Was already available in the public domain through no fault of SCHOOL;

C. Was subsequently disclosed to SCHOOL by a third party that has the right to disclose it to SCHOOL free of any obligations of confidentiality;

D. Was independently developed and legally obtained from third parties, and is not obtained, developed or disclosed in violation of this Agreement or applicable law; or

E. Is required to be disclosed by applicable law.

(b) The confidentiality obligations set forth in this Agreement apply to all or any part of any Confidential Material provided after the Effective Date of this Agreement. SCHOOL’s confidentiality obligations under this Agreement shall survive the termination of this Agreement and remain binding on SCHOOL notwithstanding the termination or expiration of this Agreement for any reason for a period of five (5) years from the Effective Date of this Agreement.

(c) The Confidential Material is the exclusive property of CUSTOMER, and SCHOOL agrees that it will maintain such Confidential Material in strict confidence and prevent the disclosure of Confidential Material to others. SCHOOL further agrees that it will not duplicate such Confidential Material or use the same for any purpose other than as provided herein. Further, SCHOOL agrees that it will restrict the disclosure of Confidential Material to other personnel or students provided by SCHOOL who have a need to know the same for the aforesaid purpose. SCHOOL further agrees that the Confidential Material belongs to CUSTOMER and is to be used solely for the benefit of CUSTOMER.

(d) SCHOOL further agrees that, promptly upon receipt of CUSTOMER’s request, SCHOOL shall return to CUSTOMER all Confidential Materials, in written or other tangible form, including, without limitation, the samples used to conduct the Technical Services.

14. **Public Statements**

SCHOOL shall not disclose, discuss, comment or provide any information (oral, electronic or written) about any aspect of the Technical Services, or its role in connection with the Technical Services, to third parties (excluding CUSTOMER’s contractors who have a need to know such information strictly for the performance of services for the benefit of CUSTOMER) including, but not limited to, members of the media, press, government personnel, or property owners, except as may be required by law, without the prior written consent of CUSTOMER, which consent may be withheld by CUSTOMER in its sole and absolute discretion. SCHOOL shall immediately refer all inquiries or requests for interviews, statements, or the like, to CUSTOMER. SCHOOL shall not publish or permit to be published (including internal publications) any pictorial, written, verbal, electronic or other information relating to this Agreement or any of the Technical Services without the prior written consent of CUSTOMER, which consent may be withheld by CUSTOMER in its sole and absolute discretion. SCHOOL shall make its employees, subcontractors, suppliers and agents aware of both the terms and conditions of this section, and agree to be bound thereby. The SCHOOL’s obligations under this section shall survive the termination of this Agreement and remain binding on SCHOOL notwithstanding the termination or expiration of this Agreement for any reason.

Notwithstanding anything herein, the SCHOOL has notified CUSTOMER that it is a Colorado Public Institution and, as such, is subject to the Colorado Open Records Act, C.R.S. 24-72-101 et seq. ("CORA").  CUSTOMER acknowledges that any information relating to this Agreement may be subject to the legal requirements of CORA; provided, however, if SCHOOL receives any request for disclosure of any information relating to CUSTOMER or this Agreement pursuant to CORA, SCHOOL shall notify CUSTOMER prior to disclosing any such information and within a reasonable period after receiving such request under CORA. CUSTOMER shall have the opportunity to defend, and assume exclusive responsibility for defending, its position as to the confidentiality of the requested information.  Neither the SCHOOL, the State of Colorado nor any of its agencies is or shall be obligated to assist in CUSTOMER's defense.   Further, if any such information is required to be disclosed after CUSTOMER has defended its position in legal or administrative proceedings, SCHOOL agrees that disclosure of any such information shall be limited to the maximum extent permitted under law.

15. **Publicity and Use of Name**

CUSTOMER agrees it will not use, directly or by implication, the name or trademarks of the Colorado School of Mines or the name of any of its employees in any statements, information, publicity or advertising of any nature including endorsements, without the prior written consent of School. SCHOOL agrees it will not use, directly or by implication, the name or trademarks of CUSTOMER or the name of any of its employees in any statements, information, publicity or advertising of any nature including endorsements, without the prior written consent of CUSTOMER.

16. **Force Majeure**

SCHOOL shall not be liable for damages if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its reasonable control such as: lightning, fire, and explosion; pest damage; strikes or labor disputes; floods; acts of God, war, terrorism, civil disturbances, and acts of civil or military authorities or the public enemy; inability to secure raw materials, transportation facilities or fuel that is beyond its reasonable control; energy shortages; acts or omissions of communications carriers; or other causes beyond the SCHOOL'S reasonable control whether or not similar to the foregoing.

17. **Termination**

Either party may terminate this Agreement by giving the other party thirty (30) days prior written notice. In the event of termination, SCHOOL shall be paid for all services completed and non-cancelable obligations incurred for the exclusive benefit of CUSTOMER prior to the date of termination.

18. **Assignment**

This Agreement may not be assigned or transferred by either party without the prior written consent of the other party.

19. **Severability**

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

20. **Entirety of Agreement**

This Agreement constitutes the entire agreement between SCHOOL and the CUSTOMER with respect to the Technical Services and no statement, whether written or oral, or purchase order made before or at the signing of this Agreement will vary or modify these written terms. Any modification of this Agreement shall be in writing and shall be signed by both parties.

21. **Governing Law**

This Agreement shall be governed by the laws of the State of Colorado and any disputes arising under it shall be instituted in the appropriate courts in the State of Colorado.

22. **Waiver**

No waiver by a party of any of the provisions of this Agreement shall be effective unless in writing and signed by such party, and only to the extent expressly provided in such written waiver. Such waiver or a failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision thereof.

23. **Counterparts**

This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument. Copies of the Parties’ signatures to this Agreement transmitted by facsimile, e-mail or other electronic means shall be considered originals for all purposes.

24. **Governmental Immunity**

Nothing in this agreement shall be construed to waive, limit, or otherwise modify any governmental immunity available to any of the persons or entities released herein under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.,.

In witness whereof, SCHOOL and CUSTOMER have executed this Agreement.

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| --- | --- |
| The Board of Trustees ofThe Colorado School of Mines | INSERT CUSTOMER NAME |
| By:  | By:  |
| Name:  | Name:  |
| Title:  | Title: |
| Date:  | Date:  |
| 84-6000551 IRS Entity Identification Number |  IRS Entity Identification Number |