**COLORADO SCHOOL OF MINES RESEARCH AGREEMENT**

 **THIS RESEARCH AGREEMENT** (“Agreement”) is executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Execution Date”) by and between [Sponsor’s legal name], a [Sponsor’s entity type (e.g., corporation, LLC, etc.] located at [Sponsor’s legal address] (hereinafter the “Sponsor”), and the Board of Trustees of the Colorado School of Mines, for and on behalf of the Colorado School of Mines, a public institution of higher education located at 1500 Illinois St., Golden, Colorado, 80401 (hereinafter “Mines”). “Party” shall mean the Sponsor or Mines as the context dictates, and when used in the plural, shall mean the Sponsor and Mines.

 **WHEREAS,** the research project contemplated by this Agreement is of mutual interest and benefit to Mines and to the Sponsor, and will further the instructional and research objectives of Mines in a manner consistent with its status as a non-profit, tax-exempt, public educational institution.

 **NOW, THEREFORE,** in consideration of the mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. **Term.** Sponsor and Mines have executed this Agreement on the Execution Date, but intend and agree that it shall be effective as of [Research Project Start Date] (“Effective Date”) with the same force and effect as if executed on that date. This Agreement is effective as of the Effective Date and ends on [End Date] (“Completion Date”), unless otherwise terminated pursuant to Article 9 below or extended by mutual written agreement of the Parties.
2. **Research Project.** Mines will use reasonable efforts to perform the research project described in Attachment A (“Research Project”). Mines will have the sole and exclusive authority to conduct, manage, control, and direct the Research Project, to supervise all Mines personnel participating in the Research Project, and to manage any Mines subcontractors carrying out Mines responsibilities in the Research Project; provided, however, that Sponsor will have reasonable opportunities during the course of the Project to advise and consult with Mines personnel regarding the Project and its progress.
3. **Research Fee and Payments.**
	1. **Research Fee.** As consideration for the performance by Mines of its obligations under this Agreement, Sponsor shall pay Mines a total of [Insert Total Budget] U.S. Dollars (US $[Numerical total budget]), including direct and indirect costs as outlined in Attachment B (“Research Fee”). Sponsor understands and agrees that Mines may realign the budget to meet unanticipated requirements or to accomplish certain programmatic changes, provided that all costs charged are allowable and reasonable.
	2. **Invoices and Payment.** An initial payment of fifty percent (50%) of the Research Fee is due and payable within thirty (30) days of the Execution Date. Subsequently, forty percent (40%) of the Research Fee is due and payable \_\_\_\_\_\_\_\_ months from the Execution Date, within thirty (30) days of Sponsor’s receipt of invoice from Mines. The remaining balance of the Research Fee is due and payable within thirty (30) days of the Completion Date, regardless of whether a no-cost extension to this Agreement is granted. Mines shall send invoices for payment to Sponsor at the following address: [Sponsor’s payment address]. Sponsor shall pay each invoice within thirty (30) days of the date of the invoice. All payments to Mines under this Agreement shall be made by check or wire transfer in accordance with the payment instructions provided with each invoice. For purposes of identification, each wire or check payment must refer to the Research Project title, invoice number, and the name of the Mines principal investigator. If Sponsor does not pay an invoice within 30 days of the date of the invoice, Mines shall have the right to stop all work on the Research Project otherwise required by this Agreement.
	3. **Taxes and Fees.** No amounts paid to Mines under this Agreement shall be subject to any withholding by Sponsor. Mines states that as a state institution of higher education, it is exempt from United States federal income taxes under Section 115(1) of the Internal Revenue Code, and from State of Colorado taxes under C.R.S. § 29-2-105, and § 39-26-704. Sponsor shall not charge or assess Mines any domestic or international taxes, charges, surcharges, or fees of any kind.

1. **Ownership of Tangible Property.** Mines shall retain title to all equipment and other tangible personal property purchased or fabricated by Mines with funds provided by Sponsor under this Agreement.
2. **Intellectual Property**
	1. **Sponsor Intellectual Property.** Title to any invention conceived of or first reduced to practice in performance of the Research Project solely by the Sponsor’s personnel (“Sponsor Invention”) shall remain with the Sponsor. Title to and the copyright in any copyrightable material first produced or composed in the performance of the Research Project solely by the Sponsor’s personnel without (“Sponsor Copyright”) shall remain with the Sponsor. Neither Sponsor Inventions nor Sponsor Copyrights shall be subject to the terms and conditions of this Agreement.
	2. **Joint Intellectual Property.**
		1. **Joint Inventions.** The Parties shall have joint title to (a) any invention conceived or first reduced to practice jointly by employees of Mines and the Sponsor’s personnel in the performance of the Research Project, or (b) any invention conceived or first reduced to practice by the Sponsor’s personnel in the performance of the Research Project with significant use of funds or facilities administered by Mines (each, a “Joint Invention”). The Sponsor shall be notified of any Joint Invention promptly after an invention disclosure is received by Mines’ Technology Transfer Office. Mines shall have the first right to file a patent application on Joint Inventions in the names of both Parties. All expenses incurred in obtaining and maintaining any patent on such Joint Invention shall be allocated between Mines and Sponsor in a proportion equal to their respective contribution to the Joint Invention. Further, the Joint Invention patent responsibilities of each Party will be established through a separate written agreement prior to the patent filing process.
		2. **Licensing Joint Inventions.** Each Party shall have the independent, unrestricted right to license to third parties any such Joint Inventions, without accounting to the other Party, except that Sponsor shall be entitled to request an exclusive license to Mines interest in such Joint Invention under Article 5.3.2 below.
		3. **Jointly Developed Copyrightable Materials.** Copyrightable materials, including computer software, developed in the performance of the Research Project either (a) jointly by employees of Mines and the Sponsor’s personnel, or (b) by the Sponsor’s personnel with significant use of funds or facilities administered by Mines, shall be jointly owned by both Parties, who shall each have the independent, unrestricted right to use or dispose of such copyrightable materials and share of the copyrights therein as they deem appropriate, without any obligation of accounting to the other Party.
	3. **Mines Intellectual Property.**
		1. **Mines Inventions.** Mines shall have sole title to any invention conceived or first reduced to practice solely by employees of Mines in the performance of the Research Project (each a “Mines Invention”). Mines shall notify Sponsor of the disclosure of any Mines Inventions to Mines Technology Transfer Office. Mines may file a patent application at its own discretion or shall do so at the request of the Sponsor and at the Sponsor’s expense.
		2. **License to Mines Inventions.** For each Mines Invention on which a patent application is filed by Mines, Mines hereby grants Sponsor a non-exclusive, non-sublicensable, non-transferable, royalty-free license for internal research purposes. To the extent it is legally able to do so, Mines further grants to Sponsor a first option to negotiate an exclusive, royalty-bearing license, with the right to sublicense, to Mines Inventions developed under this Agreement (“Option”). Once notified of a Mines Invention, Sponsor shall have thirty (30) days to elect the Option. If elected by Sponsor in writing within thirty (30) days, such Option shall extend for six (6) months after election or such other period by advance mutual written agreement between the Parties, and shall be granted to Sponsor without fee other than the consideration of the Research Project sponsored herein and the reimbursement to Mines for all patent expenses incurred for such Mines Invention prior to and during the Option period and appertaining license negotiation period. If Sponsor notifies Mines in writing of its exercise of the Option within the option period, then the Parties shall negotiate in good faith a license agreement within sixty (60) days after notification. If Sponsor does not exercise this Option, or notifies Mines that it will not exercise this Option, or the Parties fail to sign a license agreement within said sixty (60) day negotiation period, then Sponsor’s Option to license Mines rights in the Mines Invention shall terminate.
		3. **Confidentiality of Invention Disclosures.** The Sponsor shall treat all invention disclosures submitted by Mines as Confidential Information pursuant to Article 6.
		4. **Copyright Ownership and Licenses.** Title to and the copyright in any copyrightable material, including computer software, first produced or composed in the performance of the Research Project solely by employees of Mines shall remain with Mines (“Mines Copyrights”). Unless specified as a deliverable in Attachment A, Mines shall have no obligation to deliver any Mines Copyrights to Sponsor, and Sponsor shall have no license rights in any Mines Copyrights.
			1. **Mines Copyrights as Deliverables.** If Mines Copyrights are listed as deliverables in Attachment A, Mines grants to Sponsor the following rights:
				1. For any Mines Copyrights other than computer software and its documentation and informational databases, Mines hereby grants Sponsor a royalty-free, non-transferable, non-sublicensable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute, and perform all such copyrightable materials for any purpose.
				2. For Mines Copyrights in computer software and its documentation and informational databases required to be delivered to Sponsor in accordance with Attachment A, Mines hereby grants Sponsor a royalty-free, non-transferable, non-sublicensable, non-exclusive right and license to use and reproduce such computer software, and its documentation and informational databases for Sponsor’s internal research purposes.
	4. **Reservation of Rights.** No grant described in this Article 5 shall be construed to limit Mines’ right to utilize Mines Inventions and Copyrights and Mines interest in Joint Inventions and Copyrights for research and educational purposes.
3. **Publications and Confidentiality.**
	1. **Publications.** Notwithstanding anything to the contrary in this Agreement or the Research Project, Sponsor acknowledges that the results of Mines involvement in the Research Project must be publishable or otherwise available for public dissemination, and agrees that Mines has the right to present at international, national, or regional professional society meetings and other similar academic forums, and to publish in journals, theses, or dissertations, or otherwise of their own choosing, methods, information, and data resulting from or gained in pursuing the Research Project. In order to avoid improper disclosure of Sponsor proprietary information or loss of patent protection through public disclosure of said information, Mines shall furnish the Sponsor with draft copies of all proposed publications and presentations thirty (30) days prior to such publication or presentation. Sponsor will have thirty (30) days after receipt of said copies to comment on any such proposed public dissemination. Should Sponsor identify patentable subject matter requiring patent protection, Sponsor may request that Mines file a patent application, and delay publication for a period of time not to exceed an additional thirty (30) days if necessary to permit the preparation and filing of such patent application. Sponsor may also request that any information it can substantiate as being Confidential Information of Sponsor be deleted from the materials submitted, so as to protect the Confidential Information; provided that the Mines principal investigator has the final authority to determine the scope and content of any publication. If the Sponsor does not contact Mines within thirty (30) days with any exceptions to the publications, Mines will assume approval and proceed with publication. The Sponsor shall not make any public disclosure of any research information until such time as the scholarly article containing such information is published or presented. Additional delays may be granted if both Parties agree in writing.
	2. **Confidential Information.** Confidential Information (“Confidential Information”) shall mean all information provided by one Party to the other Party for the purposes of the Research Project and clearly marked as “Confidential” by the transmitting Party at the time of disclosure. In order to be considered Confidential Information, information disclosed orally or in any other transitory medium must be identified to the Recipient as confidential orally at the time of disclosure and in writing within thirty (30) days after such disclosure. Notwithstanding any marking or designation to the contrary, the confidentiality obligations set forth herein will not apply to information that: (a) is known by the receiving Party at the time of disclosure; (b) is or later becomes publicly disclosed through no fault of the receiving Party; (c) is rightfully received by the receiving Party from a third party with no duty of confidentiality to the disclosing Party; (d) is independently developed by the employees or agents of either Party without any use of Confidential Information provided by the other Party; or (e) is required by law or regulation to be disclosed.
	3. **Protection of Confidential Information.** Each Party shall use reasonable efforts to protect the Confidential Information of the other from disclosure to third Parties for a period of three (3) years from the date of receipt of such information, and no such disclosure shall be made without the disclosing Party’s written permission. All written documents containing Confidential Information and other material in tangible form received by either Party under this Agreement shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing Party upon request, except one copy may be retained for archival purposes. Sponsor acknowledges that Mines is subject to the Colorado Public Records Act (C.R.S. §§ 24-72-201 et seq.). All plans and reports marked “Confidential” shall be treated by Mines as confidential to the extent permitted under § 24-72-204.
4. **Warranty Disclaimer.**  Sponsor understands that the Research Project is experimental in nature and the outcome of the Research Project is inherently uncertain and unpredictable. Mines shall have no duty or obligation to produce, achieve, or deliver any specific result or outcome from the Research Project. Sponsor acknowledges and agrees that Mines has not made and does not make any representation, guarantee or warranty, express or implied, regarding the results of the Research Project. EXCEPT AS PROVIDED IN ARTICLE 8.5, MINES MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND HEREBY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES AS TO ANY MATTER WHATSOEVER INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO: (i) THE RESEARCH PROJECT AND ANY RESULTS OF THE RESEARCH PROJECT; (ii) DATA, REPORTS, INFORMATION OR RESEARCH PROVIDED BY EITHER MINES OR SPONSOR; (iii) NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF MINES OR THIRD PARTIES; (iv) CREATION, VALIDITY, ENFORCEMENT AND SCOPE OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING; AND (v) THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

1. **Indemnification, Liability and Insurance.**
	1. **Indemnification by Sponsor.** Sponsor agrees to indemnify and hold harmless, Mines, its Trustees, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of either Party’s performance of the Research Project pursuant to this Agreement, and/or Sponsor’s use of (i) Mines Inventions and Mines Copyrights, and licenses and Options thereto; (ii) Joint Inventions, licenses and copyrightable materials related thereto; and (iii) other deliverables provided under this Agreement; provided, however, that any such liability, loss, or damage resulting from the following are excluded from Sponsor's obligation to indemnify and hold harmless:

a. the negligent failure of Mines to substantially comply with any applicable governmental requirements; or

 b. the negligence or willful malfeasance of any Trustee, officer, agent or employee of Mines.

* 1. **Procedures for Indemnification.** Both Parties agree that upon receipt of a notice of claim or action arising out of the Research Project, the Party receiving such notice will notify the other Party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against Mines, its Trustees, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of The Colorado Attorney General, Mines agrees to cooperate with Sponsor in the defense of such claim or action.
	2. **Governmental Immunity.** Liability for claims for injuries to persons or property arising from the negligence of Mines, the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act C.R.S. §24-10-101, et seq. and the risk management statutes, C.R.S §24-30-1501, et seq., as amended. Any provision in this Agreement, whether or not incorporated herein by reference or otherwise, will be controlled or otherwise modified to limit any liability of Mines, the State of Colorado, and their officers and employees to that set forth in the above-cited laws.
	3. **Limitation of Liability.**
		1. **Limit on Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
		2. **Limit on Direct Damages.** EXCLUDING SPONSOR’S INDEMNITY OBLIGATIONS UNDER ARTICLE 8.1, IN NO EVENT SHALL EITHER PARTY’S LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT EXCEED THE TOTAL RESEARCH FEE HEREUNDER.
	4. **Insurance.** Each Party warrants and represents that it has adequate liability insurance for the protection of itself and its officers, employees, and agents, while acting within the scope of their employment by the Party. Mines shall have the right to request the appropriate certificates of insurance from Sponsor for the purpose of ascertaining the sufficiency of such coverage.
1. **Termination and Breach.**
	1. **Termination.** This Agreement may be terminated by either Party prior to the Completion Date specified in Article 1 for any reason upon the provision of written notice to the other Party at least thirty (30) days prior to the specified termination date. In the event of early termination of this Agreement by either Party, (a) Sponsor shall reimburse Mines for all costs and non-cancelable obligations incurred by Mines prior to its receipt of notice of termination, and (b) Mines shall deliver to the Sponsor any deliverables (including any partially completed plans, drawings, data, documents, surveys, maps, reports, and models) developed up to the termination date, unless termination is for breach of this Agreement by Sponsor.
	2. **Breach.** In the event that either Party commits any material breach in any of the terms and conditions of this Agreement, and fails to remedy such breach within thirty (30) days after receipt of written notice of such breach from the other Party, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party. Such termination will be effective as of the date of the receipt of such notice. The breaching Party is responsible for all costs and expenses associated with the termination, and will reimburse the non-breaching Party for such. Furthermore, if the Sponsor is the breaching Party, Sponsor will reimburse Mines for all costs, fees, and non-cancelable obligations incurred by Mines prior to the receipt of notice of termination.
2. **Survival.** Expiration or termination of this Agreement by either Party for any reason will not affect the rights and obligations of the Parties accrued prior to the Completion Date or date of termination. The following Articles survive expiration or termination of this Agreement: 3, 5, 6, 7-9, and 18.
3. **Independent Contractor.** The Parties are deemed independent contractors and may not bind the other, except as provided for herein or expressly authorized in writing by the other Party.
4. **Assignment.** Mines shall not have the right to assign its rights or responsibilities under this Agreement to any other entity without the written consent of the Sponsor. Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor’s assets or stock upon prior written notice to Mines, provided that such assignee shall have expressly assumed all of the obligations and liabilities of Sponsor under this Agreement, and provided further that Mines may assign its right to receive payments hereunder.
5. **Export control.** Sponsor understands that the Parties are subject to and that Mines obligations under this Agreement are contingent upon compliance with applicable United States laws, regulations, or orders including those that may relate to the export of technical data and equipment, such as International Traffic in Arms Regulations (“ITAR”) and/or Export Administration Act/Regulations (“EAR”), as may be amended, and agree to comply with all such laws, regulations, or orders. **It is the intent of the Parties not to disclose any export-controlled information.** Sponsor agrees that it will not provide or make accessible to Mines any export-controlled information without first notifying Mines in writing of the existence and nature of the export-controlled information and obtaining the prior written agreement of Mines, through the Mines Director of Research Administration identified in Article 16, for Mines to receive such export-controlled information. All export-controlled information shall be conspicuously labeled “Export Controlled” together with any applicable Export Control Classification Number. Mines is not obligated to receive any export-controlled information under this Agreement and may refuse receipt of such information, in its sole discretion.
6. **Modification.** The terms of this Agreement may be modified with the mutual consent of the Parties. In order to be effective, any modification to this Agreement must be a written instrument subscribed by both Parties’ authorized signatories whose purpose to modify this Agreement is clearly indicated on its face.
7. **Order of Precedence**. In the event of a conflict between the Articles of this Agreement and the appendices and attachments hereto, the conflict shall be resolved by the following order of precedence:

The Articles of the Agreement

The Research Project (Attachment A)

The Budget (Attachment B)

1. **Contract and Technical Administrators.** All correspondence or inquiries of an administrative or contractual nature pertaining to this Agreement, including, but not limited to, the exchange of executed documents and the issuance of notices, amendments, time extensions, or requests for changes, shall be directed to the Contract Administrators of the respective Parties as indicated below, with a courtesy copy to the Technical contact named below.

Contract Administrator:

Sponsor: Mines:

|  |  |
| --- | --- |
| [Administrator’s Name] | Johanna Eagan  |
| [Administrator’s Title] | Director of Research Administration |
| [Sponsor’s Name] | Colorado School of Mines |
| [Sponsor’s Address] | 130 Guggenheim Hall |
| [Sponsor’s Address cont’d.] | 1500 Illinois Street |
| [Sponsor’s city, state, & zip] | Golden, CO 80401 |
| Telephone: [insert no.] | Telephone: (303) 384-3411 |
| Facsimile: [insert no.] | Facsimile: (303) 384-2173 |
| Email: [insert email address] | Email: awards@mines.edu |

Technical contact(s):

 Sponsor: Mines:

 [Insert Name] Name

 [Insert Address] Address

 [Address cont’d.] Address cont’d.

 [Phone no.] Phone no.:

 [Email address] Email address:

1. **Compliance with Applicable Laws.** Each Party shall comply with applicable laws and regulations in the performance of the Research Project.
2. **Governing Law and Designated Litigation Venue.** This Agreement shall be governed by and construed in accordance with applicable laws of the State of Colorado, irrespective of the conflicts of law principles of Colorado or any other state. Any legal action to enforce, modify, interpret, or rescind this Agreement shall be commenced and prosecuted in the courts of Jefferson County, Colorado, or in Federal District Court for the United States District of Colorado. Each Party hereby consents to the jurisdiction of said courts and waives its right to change the venue specified in this paragraph.
3. **Counterparts.** This Agreement may be executed in counterparts or, if mutually agreeable to the undersigned authorized signatories for the Parties, through the exchange by facsimile or other electronic means of duly-signed duplicates hereof, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
4. **Entire Agreement.** This Agreement and its Attachments contain the entire agreement between the Sponsor and Mines on the subjects addressed herein and shall supersede any and all prior oral or written agreements or representations between the Sponsor and Mines, or agents and employees of either entity, including, but not limited to, any boilerplate terms and conditions printed on a purchase order or other document issued by the Sponsor to indicate acceptance of the terms hereof or facilitate payment of the fees specified herein.

[Remainder of page intentionally left blank. Signature page follows.]

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

|  |  |  |
| --- | --- | --- |
| THE BOARD OF TRUSTEES OF THE COLORADO SCHOOL OF MINES, for and on behalf of the Colorado School of MinesBy: |  | SPONSORBy: |
|  |  |  |
| Name |  | Name |
|  |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |

**ATTACHMENT A – RESEARCH PROJECT**

Please include a statement of the work to be performed; personnel involved; a list of deliverables which Mines shall produce for the Sponsor; and a schedule outlining the completion dates for discrete research tasks or milestones.

**ATTACHMENT B – BUDGET**