

**COLORADO SCHOOL OF MINES  
RESEARCH AGREEMENT**

**THIS RESEARCH AGREEMENT**, hereinafter the "Agreement," is entered into by \_\_\_\_\_, a \_\_\_\_\_ located at \_\_\_\_\_, hereinafter the "Sponsor," and Colorado School of Mines, a public institution of higher education located at 1500 Illinois St., Golden, Colorado, 80401 hereinafter "CSM," on the last date written below.

**WHEREAS**, the Sponsor requires the performance of certain research services by CSM; and

**WHEREAS**, CSM possesses the necessary qualifications, experience, and ability to perform the required research and is willing to do so in exchange for the available research fee.

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

**1. Term.** The term of this Agreement shall commence on \_\_\_\_\_ and end on \_\_\_\_\_, unless the Agreement is terminated sooner by either of the parties pursuant to paragraph 12 below or extended by either of the parties pursuant to paragraph 2 below.

**2. Renewal or Extension of Term.** This Agreement may be extended for additional periods of time or renewed for additional terms upon such conditions as may be mutually agreed upon by the parties.

**3. Statement of Work.** A specific description of the research services to be performed by CSM under this Agreement is set forth in a separate document marked *Attachment A: Statement of Work*, which is attached hereto and incorporated herein by this reference. The Statement of Work also contains one or more of the following items: a list of deliverables which CSM shall produce for the Sponsor, a budget covering the research services, and a schedule outlining the completion dates for discrete research tasks or milestones. Any ambiguity or inconsistency which may exist between this Agreement and the Statement of Work shall be resolved in favor of this Agreement.

**4. Warranty Disclaimer.** The research services described in the Statement of Work relate to research that is experimental in nature. Therefore, notwithstanding anything that may be interpreted to the contrary within the Statement of Work, CSM shall have no duty or obligation to produce, achieve, or deliver any specific result or outcome from CSM's research services. Furthermore, **CSM does not provide any warranty, express or implied, any warranty of merchantability, or any warranty of fitness for a particular purpose, all of which warranties are expressly excluded.**

**5. Research Fee.** CSM shall receive the fixed price sum of \_\_\_\_\_ U.S. Dollars (US\$\_\_\_\_\_) as compensation from the Sponsor for work performed pursuant to this Agreement. This sum shall be allocated for the budgeted items and expenses specifically listed in the Statement of Work. CSM may realign the budget to meet unanticipated requirements or to accomplish certain programmatic changes, provided that all costs charged are allowable and reasonable.

**6. Monthly Invoices and Payment.** An initial payment of 50% of the Research Fee is due and payable within thirty days of execution of this Agreement upon receipt of invoice from CSM. Subsequently 40% of the Research Fee is due and payable \_\_\_\_\_ months after execution of this Agreement. Upon delivery of final deliverable in accordance with Appendix A final payment is due and payable to CSM. CSM shall send invoices for payment to Sponsor at the following address: \_\_\_\_\_. Sponsor shall pay each invoice within 30 days of the date of the invoice. It is critical and a material requirement of this Agreement that Sponsor pay each invoice within 30 days of the date of the invoice. If Sponsor does not pay each invoice within 30 days of the date of the invoice, CSM shall have the right to stop all work and research services otherwise required by this Research Agreement. This right of CSM to stop work cannot be modified or waived except in writing signed by an authorized official of CSM. Without limiting the full force and effect of the forgoing, the parties agree that any delay by CSM in exercising its right to stop work shall not constitute a waiver or modification of such right. Once CSM has stopped work as allowed by this paragraph, any resumption of the work shall be solely within the discretion of CSM.

**7. Work Authorization Notices.** If the Statement of Work divides the research to be performed by CSM into discrete tasks with separate budgets, this paragraph shall constitute authorization for CSM to perform the initial research task in exchange for the indicated compensation. At an appropriate time, written work authorization notices covering subsequent research tasks and setting forth the applicable research and the compensation to be paid therefor shall be delivered to CSM by the Sponsor.

**8. Principal Investigators and Key Personnel.** \_\_\_\_\_ shall serve as the principal investigator and technical contact person hereunder for the Sponsor. \_\_\_\_\_ shall serve as the principal investigator and technical contact person hereunder for CSM. Other key personnel of CSM to be assigned to this project are: \_\_\_\_\_. CSM may not change the key personnel assigned to the work to be performed hereunder without the consent of the Sponsor.

**9. Independent Contractor.** CSM shall conduct all research hereunder as an independent contractor and shall have complete and exclusive authority and responsibility concerning the means and method of conducting such research.

**10. Ownership of Tangible Property.** Title to all equipment and other tangible personal property which is acquired by CSM with funds provided hereunder shall vest in CSM.

### **11. Intellectual Property**

**11.1** The parties hereby acknowledge that intellectual property, including patentable inventions, trade marks, trade secrets, tangible research property and copyrightable materials (the "Intellectual Property"), may result from the efforts of both CSM and Sponsor. The Intellectual Property shall include any inventive idea and/or its reduction to practice which relates to, but is not limited to: new processes or methods of producing a new and useful industrial result; any composition of matter, including chemical and biological compounds; any new devices; any new design in connection with the production or manufacture of an article; any new computer hardware and/or software programs; any know-how supporting these inventive ideas, systems, devices, compositions, programs or processes, data, test results, and laboratory notebook entries developed or made as a result of this Agreement; and any new use or improvement of existing systems, devices, compositions, programs or processes. The parties wish to provide for an equitable method for determining ownership rights in such Intellectual Property, while providing adequate incentives to allow for commercial development of such property.

**11.2. Ownership by CSM.** The parties hereby agree that; if in the course of performance of the research contemplated by this Agreement, Intellectual Property is generated wholly by work conceived of and performed by a CSM student or employee and the work is done independently of Sponsor, it shall be the sole property of CSM. CSM shall notify Sponsor of the creation of any Intellectual Property, and Sponsor shall have thirty (30) days to elect an option to acquire an exclusive, worldwide, royalty-bearing license to CSM's rights in such Intellectual Property. Such option, which shall extend for six (6) months after election or such other period by advance mutual written agreement between the parties, shall be granted to Sponsor without fee other than the consideration of the research sponsored herein and the reimbursement of CSM for all patent expenses incurred for a subject Invention prior to and during the option period and appertaining license negotiation period. If Sponsor notifies CSM in writing of its exercise of the option within the option period, then the parties shall proceed in good faith to negotiate a license agreement within sixty (60) days after notification of exercise. If Sponsor does not exercise this option, or notifies CSM 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 CSM's rights in the subject Invention shall terminate.

**11.3. Ownership by Sponsor.** The parties agree that if in the course of the research contemplated hereunder Intellectual Property is generated wholly by work performed by Sponsor personnel, it shall be the sole property of Sponsor.

**11.4 Joint Ownership of CSM and Sponsor.** Intellectual Property generated jointly by Sponsor personnel and CSM students or employees should be jointly owned by CSM and Sponsor. The individuals responsible for the Intellectual Property generation from both parties shall hereafter be referred to as the Originators.

**11.4.1.** With regard to joint Intellectual Property generated under this provision, the ownership and the expenses of patent filing and prosecution shall be allocated between CSM and Sponsor in a proportion equal to their respective contribution as determined by separate mutual written agreement of the parties. Further, in the event jointly owned Intellectual Property is generated, the parties will determine by written agreement who shall have control over the filing and prosecution of any patent applications as well as commercial exploitation of the Intellectual Property. Net proceeds from the item of Intellectual Property shall be calculated by subtracting the cost of obtaining a patent, if any, and all other expenses of commercial exploitation from the gross proceeds. These expenses shall first be returned to CSM and Sponsor in proportion to their respective ownership interest. Sponsor retains the right to license from CSM any patent for jointly owned Intellectual Property at fair market value, the terms of which are to be agreed upon by the parties.

**11.4.2.** In any event Sponsor retains the right to a royalty-free license of the patent for the purposes of research and development that does not involve commercial exploitation. Likewise, CSM retains the right to use whatever is developed under this Agreement for its educational and research purposes.

**11.4.3.** Both CSM and Sponsor have the right to decline any interest in the joint Intellectual Property and to not incur any of the expenses of development. In the event that one party elects to exercise this option, that party agrees to release and assign all of its right, title and interest in such Intellectual Property to the other party. If both CSM and Sponsor decline ownership, CSM and Sponsor both agree to release and assign all of their rights, title and interest in such Intellectual Property to the Originators.

## **12. Publications and Confidentiality.**

**12.1** The Sponsor acknowledges that research results obtained hereunder may be disclosed to the public in publication of scholarly articles and presentation in professional society meetings and other similar academic forums. CSM shall furnish the Sponsor with draft copies of all proposed publications and presentations thirty days prior to publication/presentation. Sponsor shall review proposed publications/presentations and suggest modifications, but will not unreasonably restrict the publication/presentation of the research results. If the publication/presentation contains Sponsor-provided confidential information or patentable subject matter requiring patent protection, Sponsor may request CSM to remove all references to its confidential or patentable information prior to publication/presentation. If the Sponsor does not contact CSM within 30 days with any exceptions to the publications, CSM shall 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.

Concerning a graduate student thesis, it is foreseeable that proprietary information of Sponsor may be included in such thesis. If a student thesis includes Sponsor confidential information, a draft copy of the thesis will be provided to Sponsor at least thirty days prior to the intended publication date. Although CSM cannot preempt or unduly delay publication of graduate student theses, it will negotiate in good faith with Sponsor to pursue student publication goals in a manner designed to ameliorate any negative impact upon Sponsor's business interest, including delaying public access to the thesis for a reasonable period of time, not to exceed twelve months. No such student thesis shall identify or make reference to or describe Sponsor or any of its affiliates, any operations or facility of Sponsor or any of its affiliates, or include any photograph or other visual depiction of any operation or facility of Sponsor or any of its affiliates without the prior written approval of Sponsor.

**12.2** Confidential Information ("Information") shall mean all information provided by one party to the other and clearly identified 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. Specifically excepted from this definition is all information: (a) known by the receiving party at the time of disclosure; (b) publicly disclosed except by breach of this Agreement; (c) rightfully received by the receiving party from a third party without an express obligation of confidence; (d) independently developed by the employees or agents of either party without any use of Information provided by the other party; or (e) is required by law or regulation to be disclosed.

**12.3** Each Party shall vigilantly protect the 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 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 CSM 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 CSM as confidential to the extent permitted under §§ 24-72-204.

**13. Liability and Insurance.**

**13.1** Sponsor agrees to indemnify and hold harmless, CSM, their 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 the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by CSM under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- a. the negligent failure of CSM to substantially comply with any applicable governmental requirements; or
- b. the negligence or willful malfeasance of any Trustee, officer, agent or employee of CSM.

**13.2** Both parties agree that upon receipt of a notice of claim or action arising out of the Research Program, 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 CSM, their 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, CSM agrees to cooperate with Sponsor in the defense of such claim or action.

**13.3** 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. CSM shall have the right to request the appropriate certificates of insurance from Sponsor for the purpose of ascertaining the sufficiency of such coverage.

**14. Termination.** This Agreement may be terminated by either party prior to the expiration of the term specified in paragraph 1 above for any reason upon the provision of written notice to the other party at least thirty days prior to the specified termination date. In the event of early termination of this Agreement by either party, CSM shall deliver to the Sponsor all information and items which would have been required to be delivered if the Agreement had been completed, including, but not limited to, partially completed plans, drawings, data, documents, surveys, maps, reports, and models, and the Sponsor shall be responsible for payment of all costs incurred and non-cancelable obligations incurred by CSM prior to its receipt of notice of termination.

**15. Assignment.** CSM 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.

**16. Compliance with Applicable Laws and Division of Legal Responsibility.** CSM states that in the course of performing its obligations under this Agreement, it shall comply with all applicable federal and state laws and regulations.

**17. 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 whose purpose to modify this Agreement is clearly indicated on its face.

**18. Contract 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.

For the Sponsor:

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For CSM:

Ralph L. Brown  
Director of Research Administration  
Colorado School of Mines  
Golden, CO 80401  
Telephone: (303) 273-3538  
Facsimile: (303) 384-2173  
Email: [Ralph.Brown@is.mines.edu](mailto:Ralph.Brown@is.mines.edu)

**19. 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 Subcontract shall be commenced and prosecuted in the courts of Jefferson County, Colorado, or in Federal District Court for the 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.

**20. Entire Agreement.** This Agreement contains the entire agreement between the Sponsor and CSM on the subjects addressed herein and shall supersede any and all prior oral or written agreements or representations between the Sponsor and CSM, 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.

**SPONSOR**

**COLORADO SCHOOL OF MINES**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Ralph L. Brown, Director  
Office of Research Administration

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date