**Confidential Disclosure Agreement**

This **Confidential Disclosure Agreemen**t (the “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”) by and among 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 ( “Mines”), [Company no. 1’s legal name], a [legal entity type] located at [Company’s legal address] ( “Company No. 1”), and [Company no. 2’s legal name], a [legal entity type] located at [Company’s legal address] ( “Company No. 2”), each of the above sometimes referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

1. **Purpose**

The Parties agree to engage in discussions and communications regarding a contemplated collaboration between the Parties regarding [detailed description of the content being exchanged] (“Purpose”), which is conditioned upon the acceptance and acknowledgement of the confidentiality obligations by the Parties related to Confidential Information (described below) pertaining to the Purpose.

**Terms and Conditions**

**2.1 Confidential Information.** “Confidential Information” means any proprietary or confidential information provided by one Party (“Disclosing Party”) to the other Parties (individually, “Receiving Party” and, collectively, “Receiving Parties”) pursuant to the Purpose, which is not in the public domain and is deemed confidential and proprietary to the Disclosing Party if it: (A) is clearly and conspicuously marked as "confidential" or "proprietary" at the time of initial disclosure; (B) is transmitted via electronic or hard copy cover letter or memorandum indicating that the contents are "confidential" or "proprietary;" (C) is orally identified as confidential at the time of disclosure and then subsequently summarized by the Disclosing Party in written form in a clearly and conspicuously marked document and submitted to the Receiving Party within twenty (20) days of the initial disclosure. Company No. 1 and Company No. 2 acknowledge that Mines is subject to the Colorado Open Records Act (C.R.S. §§ 24-72-201 et seq.). All Confidential Information marked “Confidential” shall be treated by Mines as confidential to the extent permitted under § 24-72-204.

**2.2** Notwithstanding any marking or designation to the contrary, confidentiality obligations do not apply to information that is:

1. publicly available prior to the Effective Date;
2. publicly available after the Effective Date, through no wrongful act or omission by the Receiving Party;
3. rightfully received by the Receiving Party from a third party with no duty of confidentiality to the Disclosing Party;
4. is independently developed by the Receiving Party without access or any use of Confidential Information provided by the Disclosing Party; or
5. information that was already in the Receiving Party’s possession prior to the time of disclosure as evidenced by the written records of the Receiving Party.
6. **Term; Termination.** The term of this Agreement shall be for one (1) year from the Effective Date (“Expiration Date”). A Party may terminate this Agreement sooner upon thirty (30) days prior written notice to the other Parties.
7. **Rights and Obligations of the Receiving Party.** For the period of three (3) years from the Date of Disclosure (“Confidentiality Period”), the Receiving Party shall treat all of the Disclosing Party’s Confidential Information as confidential and agrees
	1. to use the same degree of care, but no less than a reasonable standard of care, that the Receiving Party uses to protect its own confidential information;
	2. not to directly or indirectly disseminate or otherwise disclose, deliver, or make available to any third party any of the Confidential Information;
	3. to disclose the Confidential Information to its officers, employees, and agents who have a need to receive such Confidential Information solely to further the Purpose; and
	4. to use the Confidential Information only for the Purpose.
8. **Permitted Disclosure.** The Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent required by any applicable federal, state or local law, regulation, or an order, rule or decree of any Court, government or regulatory body of competent jurisdiction, provided the Receiving Party has, to the extent it is legally permitted to do, given the Disclosing Party prior written notice of such required disclosure and, to the extent reasonably possible, has given the Disclosing party an opportunity to contest such required disclosure. Any such required disclosure shall not change the status of the disclosed information as Confidential Information under the terms of this Agreement.
9. **Ownership.** Unless otherwise specified in writing, all Confidential Information remains the property of the Disclosing Party. Nothing contained in this Agreement shall be construed, either expressly or implicitly, to grant to the Receiving Party any rights by license or otherwise in any Confidential Information or to any patent, copyright, trademark, or other intellectual property right related thereto.
10. **Return of Confidential Information.** Upon termination or expiration of this Agreement, the Receiving Party shall promptly return or destroy, at the Disclosing Party’s direction, Confidential Information including all documents and copies in its possession containing Confidential Information), exception for the retention by its legal counsel of one (1) archival copy of same.
11. **Applicable Law.** This Agreement is governed by and construed in accordance with the laws of the State of Colorado, without regard to any choice of law principle that would dictate the application of the law of another jurisdiction. Regardless of venue or jurisdiction, the governmental and sovereign immunities afforded Mines as a state institution, including, without limitation, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., control.
12. **Export Control.** The Parties agree to adhere to U.S. export laws and regulations, where applicable. Neither Company No. 1 nor Company No. 2 shall disclose to Mines any information that contains information, technology, or data subject to the ITAR (22 C.F.R. 120-130), identified on the Commerce Control List (15 C.F.R. 774), the U.S. Munitions List (22 C.F.R. 121), or subject to other export controls, including NRC (10 C.F.R. 110) and DOE (10 C.F.R. 810), unless and until it obtains the written consent by a duly authorized representative of Mines. Mines is not obligated to receive any export-controlled information under this Agreement and may refuse receipt of such information, in its sole discretion.
13. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties as to the subject matter. No modification or waiver of any of the provisions of this Agreement is valid unless in writing and signed by the duly authorized representatives of the Parties.
14. **Waiver.** Any failure or delay of either Party to exercise any rights or powers under this Agreement shall not be deemed to a waiver of those rights, nor will any single or partial exercise of them preclude any further exercise, unless expressly so agreed in writing by the parties.
15. **Severability.** The unenforceability or invalidity of any provision of this Agreement does not impair, affect, or invalidate the other provisions of this Agreement.
16. **Assignability.** This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties, but neither of the parties may assign or transfer the Agreement without the prior written consent of the other party.
17. **Power to Agree.** Each Party represents to the other Party that the signatory of this Agreement is signing and acting on behalf of the Party listed and holds full authority to execute this Agreement.
18. **Scope; No Exclusivity or Future Commitment.** This Agreement does not constitute, and shall not be deemed, a partnership, association, joint venture, agency, or exclusive relationship. Each Party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the Parties to enter into any subsequent agreement or relationship.
19. **Disclaimer of Warranties.** ALL INFORMATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE CONFIDENTIAL INFORMATION, IS PROVIDED “AS IS.” NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THOSE AS TO ACCURACY, COMPLETENESS, CONDITION, SUITABILITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE.
20. **Counterparts, Electronic, and Facsimile Delivery.** This Agreement may be executed in two or more identical counterparts by electronic or facsimile transmission. Digital and facsimile signatures have the same force and effect as an original signature.

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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| THE BOARD OF TRUSTEES OF THE COLORADO SCHOOL OF MINES, for and on behalf of the Colorado School of Mines | [Company No. 1 name] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  | Name: ­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

ACKNOWLEDGEMENT SIGNATURE

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| [Company No. 2 name] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: ­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |