**TECHNICAL SERVICES AGREEMENT**

**THIS TECHNICAL SERVICES AGREEMENT** (“Agreement”) is executed on [Date] (“Execution Date”) by and between [Company Name] a [Company’s entity type (e.g., corporation, LLC, etc.] located at [Company’s legal address] (hereinafter the “Company”), 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 Company or Mines as the context dictates or collectively as the “Parties”.

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

**1**. **Term.** This Agreement is effective as of [Start Date] and shall end on [End Date], unless otherwise terminated pursuant to Article 8 or extended by mutual written agreement of the Parties.

**2**. **Statement of Work**. Mines will perform the technical services (the “Work”) and provide the deliverables (the “Deliverables”) as described in Attachment A, Statement of Work.Mines shall provide qualified personnel and facilities, including office, laboratory, equipment, and field space, required for performance under this Agreement. Mines technical contact for the Work: [PI Name].

**3**. **Compensation**.

**3**.**1**. Company agrees to compensate Mines in the amount of [$X,XXX] U.S. Dollars (“Fee”). Payment shall be made in accordance with the remittance instructions on each invoice. For purposes of identification, each remittance made by the Company must refer to the invoice number and name of the Mines technical contact.

**3**.**2**. Mines shall send monthly invoices for payment to Company at the following address: [Company’s payment address]. Company shall pay each invoice within thirty (30) days of the date of the invoice.

**3**.**3**. In the event Mines’ expenses exceed the Fee, or in the event the Work cannot be completed within the term of this Agreement due to circumstances beyond the control of Mines, Mines will notify Company as soon as reasonably possible, and Company shall have the option of (i) terminating this Agreement, without making any payment to Mines other than for any Work previously completed, or (ii) continuing the Agreement and agreeing to an increase in the Fee. Mines shall not exceed the Fee without obtaining Company’s prior written consent.

**3**.**4**. If Company does not pay an invoice within thirty (30) days of the date of the invoice, Mines shall have the right to stop any or all Work required by this Agreement, withhold Deliverables until payment is made, and/or require payment of the Fee in full prior to resuming work.

**4**. **Ownership Rights**.

**4**.**1**.Upon Mines’ receipt of payment in full of the Fee, all right, title, and interest in and to the Deliverables shall vest in Company. Nothing in this Agreement shall be construed as granting to Mines any right or license under any of Company’s present or future patent rights, or as granting to Mines any right or license to use for any purpose other than those purposes expressly stated herein any of Company’s Confidential Information or Deliverables provided in connection with performance of the Work.

**4**.**2**. Improvements of methodology, discoveries, inventions, copyrightable work, equipment, or process developed solely by Mines (“Discoveries”) during the course the Work and which can be used independently of this Agreement shall be the sole property of Mines so long as no Confidential Information of Company is incorporated into or comprise any part of the Discoveries. Nothing in this Agreement shall be construed as granting to Company any right or license under any such Discoveries.

**5**. **Confidential Information**.

**5**.**1**. “Confidential Information” means all information provided by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) pursuant to the Work, 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 acknowledges 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.

**5**.**2**. For a period of one (1) year from the date of disclosure (“Confidentiality Period”), the Receiving Party shall treat all of the Disclosing Party’s Confidential Information as confidential. 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, samples, and copies in its possession containing Confidential Information.

**5**.**3**. Mines shall not disclose, discuss, comment, or provide any information about any aspect of the Work or Deliverables, or Mines’ role in connection with the Work, to third parties except as may be required by law, without the prior written consent of Company. Mines shall immediately refer all inquiries or requests for interviews, statements, or the like, to Company. Mines shall not publish or permit to be published (including internal publications) any pictorial, written, verbal, electronic or other information relating to the Work or Deliverables without the prior written consent of Company. The Parties agree they will not use, directly or by implication, the name or trademarks of the other Party or the name of any of their employees in any statements, information, publicity, or advertising of any nature including endorsements, without prior written consent from the other Party. Nothing contained herein shall be construed as limiting Mines’ right to disclose, discuss, comment, or provide information about any Discoveries developed during the course of the Work.

**6**. **No Warranty and/or No Consulting**.

**6**.**1**. The Deliverables and Work completed are believed to be reliable. Notwithstanding the foregoing or anything statement provided herein to the contrary, Mines DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Company is solely responsible for evaluating whether the Deliverables obtained from the Work are suitable for Company’s use.

**6**.**2**. Mines is prohibited from performing consultant work that involves rendering an expertopinion or giving expert advice. Neither Mines nor any of its personnel providing services pursuant to this Agreement will provide expert opinions, including expert testimony or witness, guidance, or advice or offer recommendations that could be considered professional opinions, guidance, or advice. Mines and its personnel providing services pursuant to this Agreement are limited to performing technical services such as collecting and analyzing samples, producing data based on sample analysis, and reporting on samples analyzed or data produced. For the avoidance of doubt, the Parties agree that Mines’ services under this Agreement shall not be consulting services, and Company further warrants that the services are not sought for the purposes of admitting the results as evidence in litigation. The services shall be limited as provided in this paragraph, specifically, and this Agreement, generally.

**7**. **Liability**. Each Party shall be responsible for their own negligent acts and omissions and the negligent act and omissions of their employees. 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 Colorado Governmental Immunity Act C.R.S. §24-10-101, 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.

**8**. **Termination**. Either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice. In the event of termination, Mines shall be paid for all Work completed and non-cancelable obligations incurred for the exclusive benefit of Party prior to the date of termination.

**9**. **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 end date or date of termination. The following Articles survive expiration or termination of this Agreement: 3 – 7 and 16.

**10**. **Nature of Relationship**. Mines is an independent contractor and Mines shall not be deemed to be an employee of Company. Neither Party shall enter into any agreement or incur any obligations on the other’s behalf or commit the other in any manner.

**11**. **Assignment**. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party.

**12**. **Export Control**. It is the intent of the Parties not to disclose any export-controlled information. Company 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. 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 and may refuse receipt of such information, in its sole discretion.

 **13**. **Modification**. Any modification of this Agreement shall be in writing and shall be signed by both Parties.

**14**. **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:

Articles of the Agreement

Statement of Work (Attachment A)

**15**. **Notices**. 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:

 **Mines** **[Company**]

 Johanna Eagan, Director [Name & title]

 Office of Research Administration [Title con’t.]

 Colorado School of Mines [Address]

 1500 Illinois Street

 Golden, CO. 80401

 Email: awards@mines.edu Email: [contact@company.com]

**16**. **Compliance and Governing Law**. Each Party shall comply with all applicable Federal and State of Colorado laws and regulations in the performance of the Work. 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. The Parties hereby consents to the jurisdiction to the Court of Jefferson County, Colorado.

**17**. **Force Majeure**.Mines 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, pandemic, government orders, closure of campus for health & safety, travel restrictions related to health & safety, 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 Mines' reasonable control whether or not similar to the foregoing and whether or not foreseen or foreseeable.

**18**. **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 electronic means shall be considered originals for all purposes.

**19**. **Severability; Entirety of Agreement**. 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 therein. This Agreement constitutes the entire agreement between Mines and the Company with respect to the Work 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.

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**THE BOARD OF TRUSTEES OF THE [Company]**

**COLORADO SCHOOL OF MINE, for and on**

**Behalf of the Colorado School of Mines**

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

 Johanna Eagan, Director [Name & Title]

 Office of Research Administration [Office/Title con’t.]

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

**ATTACHMENT A – STATEMENT OF WORK**