AGREEMENT

This Agreement (“AGREEMENT”), entered into as of <<DATE, YEAR>> (“EFFECTIVE DATE”), is between the South Dakota School of Mines & Technology, a division of the State of South Dakota through its Agents, the South Dakota Board of Regents, hereinafter referred to as “SDSM&T”, with its principal place of business at 501 E. Saint Joseph Street, Rapid City, SD 57701; and <<COMPANY LEGAL NAME>> (“<<BUSINESS ABBRV>>”), with its principal place of business at <<STREET NAME>>, <<CITY, STATE, ZIPCODE>>, hereinafter referred to as “<<BUSINESS ABBRV>>”. SDSM&T and <<BUSINESS ABBRV>> shall be collectively referred to as “the PARTIES” and each shall be singularly referred to as the “PARTY.”

WHEREAS, the mission of SDSM&T defined by South Dakota Board of Regents Policy 1:10:2 is to serve students and clients through teaching, research, and extension activities; and

WHEREAS, PARTIES wish to collaboratively cultivate and promote research, technology and knowledge based economic development in South Dakota for mutual benefit of PARTIES; and

WHEREAS,

NOW THEREFORE, In consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the PARTIES agree as follows:

§1 Areas of Collaboration:
A. Promote research, science, technology, engineering and knowledge-based economic development;
B. Collaborate to seek opportunities to commercialize intellectual properties developed by SDSM&T; and
C. <<Something specific to your partnership>>
D.

§2 Assignment: This AGREEMENT, or any part thereof, may not be assigned, transferred, or subcontracted by the CONTRACTOR without the prior written consent of the SDSM&T.

§3 Confidentiality & Proprietary Information: the PARTIES anticipate that confidential proprietary information may be disclosed and received during the term of this AGREEMENT. Proprietary Information is defined as: Any information obtained directly or indirectly by a RECIPIENT (defined as the PARTY receiving such confidential information) from a DISCLOSER (defined as the PARTY disclosing such confidential information) will be deemed “PROPRIETARY INFORMATION” regardless of the form or manner of disclosure or whether or not it is marked as “CONFIDENTIAL” (or with a similar designation). PROPRIETARY INFORMATION includes any information a PARTY identifies as proprietary and confidential or that otherwise qualifies for protection under any law providing or creating intellectual property rights, including the Uniform Trade Secrets Act.

RECIPIENT will maintain the secrecy and confidentiality of all PROPRIETARY INFORMATION of the DISCLOSER disclosing such PROPRIETARY INFORMATION. RECIPIENT will use PROPRIETARY INFORMATION only in activity authorized by DISCLOSER. RECIPIENT will not disclose PROPRIETARY INFORMATION to any other person or entity (including affiliates and subsidiaries) without prior written authorization from DISCLOSER. RECIPIENT will not attempt to alter, deconstruct,
disassemble, or reverse engineer any item or material containing PROPRIETARY INFORMATION. RECIPIENT will not remove a designation of confidentiality from any item or material containing PROPRIETARY INFORMATION. RECIPIENT agrees to use measures to protect the secrecy and confidentiality of PROPRIETARY INFORMATION that are no less than reasonable under the circumstances. No disclosure amongst the PARTIES under this AGREEMENT will be considered an offer to sell or a public disclosure; all U.S. and foreign patent rights are expressly preserved to the maximum extent allowable by law.

PROPRIETARY INFORMATION is made available to a RECIPIENT on a restricted and confidential basis. PROPRIETARY INFORMATION is provided on an “as-is” basis; DISCLOSER expressly disclaims any warranty as to the accuracy or fitness of any PROPRIETARY INFORMATION under this AGREEMENT. At the request of DISCLOSER, RECIPIENT will return to DISCLOSER within thirty (30) days all information and materials that include, incorporate, or otherwise contain PROPRIETARY INFORMATION.

The following exclusions apply to the above paragraphs:
RECIPIENT will be under no obligation of confidentiality with respect to information that:
- is proven to have been lawfully obtained by RECIPIENT prior to the EFFECTIVE DATE and other than through a direct or indirect relationship with DISCLOSER;
- is or becomes available to the public through no fault or wrongful act of RECIPIENT; or
- is lawfully received by RECIPIENT in good faith from an entity owing no duty of confidentiality to DISCLOSER.

§ 4 Conflict of Interest: No officer or employee of PARTIES shall participate in any decision relating to this AGREEMENT that affects his or her personal interest in any entity in which he or she directly or indirectly has interest without a full disclosure and consent of the other PARTY. It is the responsibility of a PARTY’s employee to make a conflict of interest disclosure when appropriate and provide essential information per the employer’s policies and procedures for handling financial conflicts of interest.

§ 5 Counterparts: This AGREEMENT may be signed in counterparts, each of which when taken together shall constitute once fully executed document. Each individual executing this AGREEMENT on behalf of a PARTY does hereby represent and warrant to other PARTIES by signing this AGREEMENT that he or she has been duly authorized to execute this AGREEMENT on behalf of the PARTY.

§ 6 Employees and Agents: The PARTIES will be responsible for compliance with the terms of this AGREEMENT by their employees, agents, affiliates, and subsidiaries and hereby establish their employees, agents, affiliates and subsidiaries as Agents assigned to participate in the performance of this AGREEMENT and its terms and conditions.

§ 7 Entire Agreement: This AGREEMENT contains the entire agreement between the PARTIES and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral between the PARTIES respecting the subject matter hereof. Except as specifically allowed in the AGREEMENT, no modification to this agreement nor any failure or delay in enforcing any term or exercising any option or requiring performance shall be binding or construed as a waiver unless agreed to in writing by the PARTIES.

§ 8 Force Majeure: No PARTY shall be liable for any failure or delay in performance under this AGREEMENT to the extent said failure or delays are proximately caused by causes beyond that PARTY’s reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, pandemic diseases, insurrections and/or any other cause beyond the reasonable control of the PARTY whose performance is affected. As a condition to the claim of non-liability, the PARTY experiencing the difficulty shall give the other PARTY prompt written notice, with full details following the occurrence of the cause relied upon. Date by which performances obligations are scheduled to be met will be negotiated between the PARTIES.
§9 **Funding Out:** All PARTIES acknowledge that legislative action may require the curtailment or termination of some or all of SDSM&T’s research and educational programs. The PARTIES acknowledge further that SDSM&T is obligated to respond to such legislative action and may determine that it is necessary in the public interest to curtail the activities specified in the AGREEMENT. Termination of this AGREEMENT in response to a failure or appropriations shall not be deemed a breach of this AGREEMENT.

§10 **Headings:** The headings of this AGREEMENT are for convenience of reference only and do not define, describe, extend, or limit the scope or intent of this AGREEMENT or the scope or intent of any provision contained in the AGREEMENT thus shall not be used in interpretations of this AGREEMENT. Except where the context requires otherwise, whenever used the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or”. Whenever this AGREEMENT refers to a number of days, unless otherwise specified such number refers to calendar days. The wording of this AGREEMENT shall be deemed to be the wording mutually chosen by the PARTIES and no rule of strict construction shall be applied against any PARTY.

§11 **Intellectual Property:** Except as otherwise provided herein, ownership of Intellectual Property shall vest in the PARTY whose personnel conceived the subject matter or first actually reduced the subject matter to practice, and such PARTY may perfect legal protection therein in its own name and at its own expense. Jointly made or generated Intellectual Property shall be jointly owned by the PARTIES pursuant to terms and conditions negotiated specifically for the purposes of clarifying rights related to said jointly-developed intellectual property.

§12 **Jurisdiction:** It is understood and agreed that this AGREEMENT shall be interpreted according to the laws of the State of South Dakota, and that the appropriate forum for any litigation or other dispute resolution pertaining to this AGREEMENT shall be the Circuit Court of Pennington County, Seventh Judicial Circuit, Rapid City, South Dakota. The PARTIES consent to the jurisdiction of such court and hereby waive any claims of lack of personal jurisdiction or inconvenience of the chosen forum.

§13 **Modification:** This AGREEMENT may be modified or amended only in writing signed by both PARTIES.

§14 **Notice:** Notices or communications to or between the PARTIES shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such PARTY. The mutually agreed addresses for such Notice shall be:

If to SDSM&T:
South Dakota School of Mines & Technology
Attention: Associate Vice President for Research
501 E. St. Joseph Street
Rapid City, SD 57701

If to **<<BUSSINESS ABBRV.>>:**
**<<COMPANY LEGAL NAME>>**
Attention: **<<2nd PARTY CONTACT>>,<<2nd PARTY TITLE>>**
**<<STREET NAME>>**
**<<CITY,STATE,ZIPCODE>>**

§15 **Publicity:** PARTIES have a basic responsibility to disseminate information through presentations and publications. Therefore, PARTIES retain the right to publish results of collaboration. Notwithstanding the previous right to publish, PARTY will provide copies of any proposed forms of presentations to the other PARTY at least five (5) days in advance of such submission to other entities, and will accept and incorporate reasonable edits and changes suggested by the other PARTY. This clause does not supersede each PARTY’s responsibility to maintain the confidentiality of proprietary information as described above.

§16 **Reformation & Severability:** If any provisions of this AGREEMENT is declared invalid by any tribunal, then such provision shall be deemed automatically adjusted to the minimum extent necessary to conform to
the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of
this AGREEMENT as though originally included herein. In the event the provision invalidated is of such a
nature that it cannot be so adjusted, the provision shall be deemed deleted from the AGREEMENT as
though such provision had never been included herein. In either case, all remaining provisions of this
AGREEMENT shall remain in full force and effect.

§17 Resolution: Any controversy or claim arising out of or relating to this AGREEMENT, or a breach, default,
termination, enforcement or interpretation thereof, shall be settled by binding arbitration in accordance with
the rules of the American Arbitration Association before a three member panel. This arbitration to be held
in the county of Pennington, state of South Dakota per §2 above. Judgment upon any award rendered by
the arbitrator(s) shall be reduced to writing and may be entered in any State or Federal court having
jurisdiction. The PARTIES agree that the panel shall have rights to enjoin the PARTIES and to specifically
enforce obligations under this AGREEMENT. Except as otherwise provided, attorneys’ fees shall not be
awarded to the prevailing PARTY.

§18 Term/Period of Performance: This AGREEMENT shall continue in full force and effect for a period of
five (5) years from the EFFECTIVE DATE. All of the PARTIES’ obligations and duties hereunder shall
survive termination of this AGREEMENT for any reason and shall continue in full force and effect with
respect to all propriety information received prior to such termination for five (5) years from the date of
such termination.

§19 Termination: This AGREEMENT may be terminated prior to the expiration of its term by mutual
agreement of the PARTIES, or by a PARTY, with or without cause, upon sixty (60) days prior notice to the
other PARTY.

§20 Warranty/Waiver: THE PRODUCTS OR INTELLECTUAL PROPERTY CREATED AS A RESULT OF
THIS AGREEMENT OR USED AS PART OF THIS AGREEMENT ARE PROVIDED “AS IS” AND
WITHOUT WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A
PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. PROVIDING
PARTY MAKES NO REPRESENTATION OR WARRANTY THAT THE PRODUCT, METHOD, OR
THE USE OF PATENT RIGHTS WILL NOT INFRINGE ANY OTHER PATENT OR OTHER
PROPRIETARY RIGHTS.

IN WITNESS WHEREOF, the PARTIES have caused this valid and binding AGREEMENT to be duly executed
by authorized signatories as indicated below.

South Dakota School of Mines and Technology <<COMPANY LEGAL NAME>>
“SDSM&T” <<BUSINESS ABBRV.>>

By: By:
Name: Lance Eric James II, JD MS Name: <<2nd PARTY CONTACT>>
Title: Associate Vice President for Research Title: <<2nd PARTY TITLE>>
Date: Date: