MUDTOC

The Mudrock and Tight Oil Characterization Consortium

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT, hereinafter the “Agreement,” is entered into by ______________________________, a ____________________ located in ________________________, hereinafter the “Sponsoring Member,” 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 in Golden, Colorado, hereinafter “CSM,” on the last date written below.

WHEREAS, the parties to this Agreement intend to join together in a collaborative effort to support “The Mudrock and Tight Oil Characterization Consortium” hereinafter the “MUDTOC Consortium”.

NOW THEREFORE, for the mutual benefit, each to the other, the parties hereto agree to the following terms and conditions:

A. OPERATION AND ORGANIZATION OF THE CONSORTIUM

1. The MUDTOC Consortium is operated by certain faculty at the Colorado School of Mines. The MUDTOC Consortium is supported by Sponsoring Members and State and Federal funding.

2. The organization and operation of the MUDTOC Consortium is as specified in the MUDTOC Consortium By-Laws, which are attached hereto as Attachment A and incorporated herein by reference.

3. The purpose of this Agreement is to establish a process for the identification, selection, development and implementation of pre-competitive research projects (“Shared Research”).

4. Focused sponsored research projects may be performed under separate sponsor-specific research agreements (“Sponsored Research”).
B. MEMBERSHIP STATUS AND FEES

1. Any private or public entity may become a Sponsoring Member.

2. Private and public entities may become Sponsoring Members upon payment of a minimum annual membership fee of $35,000.

C. TERM AND TERMINATION OF AGREEMENT

1. The term of a Sponsoring Member’s participation shall be for one (1) calendar year, January 1 through December 31st and is renewed automatically at the end of each term for an additional one-year period, unless such Sponsoring Member submits a notice of non-renewal to the MUDTOC Consortium. Notice of non-renewal must be received by the MUDTOC Consortium at least three (3) months prior to the end of each one-year cycle.

2. Each Sponsoring Member’s payment for its first year shall be due within thirty (30) days of the date of full execution of this Agreement. Payment for the second year of this Agreement shall be due on receipt of the invoice for the second year.

3. Early withdrawal will not entitle Sponsoring Member to a refund on a pro-rata basis unless the withdrawal is due to a breach or default of another party. The party who committed the breach will not be entitled to any refund.

4. CSM may immediately terminate this Agreement in the event of Sponsoring Member’s non-payment and/or breach of a material provision of this Agreement. Prior to termination for breach, CSM will first give notice to Sponsoring Member and permit Sponsoring Member a thirty (30) day opportunity to cure such breach.

D. RIGHTS OF SPONSORING MEMBERS

1. Each Sponsoring Member shall be entitled to one representative to the Consortium Advisory Board (“CAB”) as established by the By-Laws. The representatives to the CAB shall be entitled to vote on certain MUDTOC Consortium matters described in the MUDTOC Consortium’s By-Laws, including the election of a CAB Steering Committee.
2. The MUDTOC Consortium faculty shall make *annual reports* to the Advisory Board on all MUDTOC Consortium supported Shared Research projects. Sponsoring Members may make unrestricted use of the research results generated by MUDTOC Consortium-supported Shared Research, subject to the terms and conditions of ownership and licensing of inventions and copyrights stated in Paragraph F.

E. PUBLICATIONS

1. CSM reserves the right to publish results first generated from the Shared Research performed by their Investigators through the MUDTOC Consortium. Manuscripts shall be submitted to Sponsoring Members for review at least thirty (30) days prior to submission for publication. During the thirty (30) day period following receipt of the manuscript, a request by one or more of the Sponsoring Members to delay submission for a period not to exceed one hundred and eighty (180) days in total may be granted for the purposes of protecting confidential information or potentially patentable intellectual property. Requests must be in writing and provide sufficient justification for the delay.

2. At the request of a Sponsoring Member, proprietary information provided by such Sponsoring Member will be deleted from materials intended for publication. The terms of this paragraph shall survive expiration or termination of this Agreement for a period of three (3) years.

3. The MUDTOC Consortium shall be appropriately acknowledged in all presentations.

F. OWNERSHIP AND LICENSING OF INVENTIONS

1. Intellectual property developed under Sponsored Research agreements shall be governed as specified therein.

2. Intellectual property developed from MUDTOC Consortium-sponsored Shared Research projects shall be governed as specified herein.

3. Intellectual Property includes the following items if they arise under this Agreement:
   a) any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States ("Inventions");
b) original works of authorship fixed in a tangible medium of expression, excluding theses and dissertations, (“Works”); and
c) data, test results, and laboratory notebook entries developed or made as a result of the Project (“Data”).

4. Ownership of Intellectual Property shall follow U.S. Copyright and Patent law. Title to all Intellectual Property from Shared Research projects shall reside with CSM, unless otherwise agreed to in writing by the parties to the Shared Research project.

5. CSM shall notify all Sponsoring Members of the creation of any Intellectual Property under a Shared Research project through a Non-Confidential Summary.

6. Sponsoring Members may elect in writing within sixty (60) days of receipt of a Non-Confidential Summary (“Option Period”) that it desires to obtain a non-exclusive, paid-up, worldwide, royalty-free license to Intellectual Property for research and development as specified in the Non-Confidential Summary at which time CSM shall make such grant (“License”). The use may be made by Sponsoring Member or any entity in which Sponsoring Member has a controlling interest or at least 50% ownership interest (“Affiliates”), or agents acting on behalf of Sponsoring Member, but there shall be no right to sublicense such grant to third parties other than as provided herein. The grant of such rights is based on compliance with the terms of this Agreement. Upon electing the License, Sponsoring Member agrees, as payment for such License, to pay a pro-rata share of actual costs to acquire the Intellectual Property. For avoidance of doubt, the Non-Confidential Summary shall contain the Intellectual Property to be licensed and the estimated cost for acquisition of rights in the Intellectual Property including the cost per territory of such acquisition of rights outside the US, if requested by Sponsoring Member. Each Sponsoring Member shall pay a pro rata amount of such costs depending on the number of Sponsoring Members electing to accept such a License.

7. CSM shall have sole responsibility for the preparation, filing, prosecution, maintenance, and enforcement of patents related to Inventions, unless otherwise agreed by the parties in writing.

8. If no Sponsoring Member exercises its option rights during the Option Period, then all Sponsoring Members’ rights in the subject Intellectual Property shall terminate, and CSM will be free to license such Intellectual Property to third parties. In the event that a Sponsoring Member exercises its option rights during the Option Period and the parties fail to sign a license agreement within a Negotiation Period of one hundred twenty (120) days from the end of the Option Period, then such Sponsoring Member’s rights in the subject Intellectual Property shall terminate, the Sponsoring Member shall have no obligation to pay a pro rata share for costs to acquire Intellectual Property that are incurred after the Option Period and Negotiation Period, and CSM will be free to license such Intellectual Property to third parties. The Negotiation Period may be extended at the discretion of the negotiating parties.
9. Private or public entities joining the Consortium as Sponsoring Members following the inception of the MUDTOC Consortium shall not be entitled to rights under Section F for Intellectual Property disclosed prior to their respective dates of membership.

G. AGREEMENT 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 Agreement Administrators of the respective parties as indicated below.

For the Sponsor:     For CSM:
_________________________   Debbie Rickaby
_________________________   Grant Administrator, ORA
__________________________   Colorado School of Mines
__________________________   Golden, CO  80401
__________________________   Telephone: (303) 273-3429
__________________________   Email: drickaby@mines.edu
H. ADDITIONAL TERMS AND CONDITIONS

1. This Agreement is governed by the laws of the State of Colorado. If any provision of this Agreement is held unenforceable, the remaining portions shall remain in full force and effect.

2. Sponsoring Members agree not to use the name or trademarks of Colorado School of Mines in any advertising or publicity without the express written permission of CSM. CSM agrees not to use the name or trademarks of Sponsoring Member in any advertising or publicity without the express written permission of Sponsoring Member.

The foregoing notwithstanding, Sponsoring Members and CSM may identify the parties to this Agreement for purposes of promoting the MUDTOC Consortium.


4. This Agreement may be assigned by a Sponsoring Member to any of its Affiliates, or successors in interest, but may not otherwise be assigned without CSM’s written consent, which will not be unreasonably withheld.

5. CSM represents that it has adequate liability insurance, which may include self-insurance, such protection being applicable to officers, employees, and agents while acting within the course and scope of their employment.

6. Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof, but only to the extent that such liability is established by the law, including the laws of governmental and sovereign immunity.

7. This Agreement sets forth the entire understanding between CSM and Sponsoring Member with respect to the Consortium’s Program, and supersedes, cancels, and merges all prior or contemporaneous communications, negotiations, understanding, and agreements relating thereto. No changes, alterations, or modifications to this Agreement will be effective unless in writing and signed by the authorized representatives of each party.
I. MEMBERSHIP EQUITY FEE. If the Sponsoring Member shall join the MUDTOC Consortium after the first year, in addition to the annual membership fee for the current year, a Membership Equity Fee of $15,000.00 shall be assessed to permit the Sponsoring Member to use and/or access all publications, inventions, discoveries, and computer software generated by the MUDTOC Consortium since its inception.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Approved and Agreed: Colorado School of Mines

_________________________  _________________________
Name      Ralph L. Brown

_________________________  _____________________________
Title      Director, Office of Research Administration

_____________________  _________________________
Date       Date