

AGREEMENT

between

**FERMI RESEARCH ALLIANCE, LLC, as manager and operator of the
FERMI NATIONAL ACCELERATOR LABORATORY**

and

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY

This Agreement is effective April ___, 2021 between the FERMI RESEARCH ALLIANCE, LLC (hereinafter called “FRA”) and SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY (hereinafter called “SDSTA”).

RECITALS

A. FRA and Kiewit/Alberici, a Joint Venture (“KAJV”) entered into a Subcontract (“KAJV Subcontract”), which provides for the construction of certain facilities at the Sanford Underground Research Facility (“SURF”). The KAJV Subcontract provides in part:

Prior to the commencement of any of Option 1A or Option 1B Execution of Construction Subcontract Work, Subcontractor shall provide a firm quote for providing the builder's risk policy, and shall deliver a copy of such quote and the policy form to FRA. FRA shall, in its discretion, select the builder's risk program that it deems to be in FRA's best interests. If FRA selects the Subcontractor's builder's risk program, then such program shall be described in detail in a Subcontract Modification.

B. FRA selected KAJV's builder's risk program for Option 1A.

C. KAJV entered into a sub-subcontract (“TMI Subcontract”) with Thyssen Mining Inc. (TMI) for certain excavation work (“EXC Work”), and promptly assigned the TMI Subcontract to FRA pursuant to a three-party Assignment Agreement executed by FRA, KAJV and TMI. At the time of the Assignment Agreement, KAJV advised FRA that it would not be able to submit a quote for builder's risk insurance covering the Option 1B EXC Work.

D. FRA entered into a Subcontract with SDSTA (“SDSTA Subcontract”) by which SDSTA will provide certain logistics and rigging services in support of the EXC Work and KAJV Subcontract.

E. The U.S. Department of Energy (“DOE”) has paid for, and has retained ownership of, certain improvements to certain Ross Shaft infrastructure and the Ross Hoists and related hoisting equipment (the “DOE Property”). SDSTA paid for and/or is otherwise the owner of, the stone and concrete making up the Ross Shaft, certain

Ross Shaft Infrastructure, Hoists, and related Hoisting Equipment (the “SDSTA Property”). The DOE Property and the SDSTA Property are described on Exhibit A, attached hereto and incorporated herein by this reference.

F. This Agreement establishes responsibilities and principles for administering claims in relation to Builder’s Risk insurance coverage for LBNF construction work performed by TMI and KAJV and SDSTA equipment to be used in support of the SDSTA Subcontract.

G. FRA will purchase a Builder’s Risk insurance policy that will identify FRA as the Named Insurance and will include KAJV, TMI, SDSTA, and the U.S. Government acting through the Department of Energy, and all contractors and subcontractors of every tier, as additional insureds.

AGREEMENT

NOW THEREFORE, the parties hereto mutually agree as follows:

1. FRA will purchase a occurrence-based Builder’s Risk insurance policy (the “BR Policy”) as Named Insured. The BR Policy will include KAJV, TMI, SDSTA, and the U.S. Government acting through the Department of Energy, and all contractors and subcontractors of every tier, as additional insureds (each, an “Insured”). The BR Policy shall also include a waiver of subrogation in favor of the Homestake Indemnified Parties (as the term “Homestake Indemnified Parties” is used in the Property Donation Agreement between and among SDSTA, Homestake Mining Company of California, Barrick Gold Corporation, and others) or name the Homestake Indemnified Parties as additional insureds. The BR Policy shall be in the form of the insurance policy attached hereto as Exhibit B. FRA will not materially change the terms of the BR Policy without first consulting with SDSTA. FRA shall maintain a waiver of subrogation in favor of the Homestake Indemnified Parties within the BR Policy or provide for the Homestake Indemnified Parties to be additional insureds for so long as the BR Policy remains in effect
2. Each Insured shall submit claims in accordance with the terms of the BR Policy. FRA shall submit claims to the insurers on behalf of each Insured in the form submitted to FRA by the applicable Insured. SDSTA shall cooperate with every other Insured in submitting information requested to support insurance claims submitted by any other Insured within 10 days of a request for information or such other time period agreed upon by the applicable Insureds. If SDSTA desires to contest the adjustment of a loss, FRA, as Named Insured, shall submit such materials and otherwise reasonably cooperate with SDSTA to contest the adjustment as reasonably requested by SDSTA; in such event, SDSTA shall provide such documents, witnesses, and other information as shall be reasonably necessary to facilitate the submission of materials by FRA. FRA and SDSTA shall bear their own internal costs associated with submission of materials to the Insurer contesting an adjustment; SDSTA shall bear the cost of any third-party experts, attorneys, or other consultants necessary to support the contest. Any reference herein to SDSTA claims or losses “as adjusted” or as “fully adjusted” or similar terms shall mean the

amount payable to SDSTA after SDSTA exercises its right to contest the adjustment of any claim or loss.

3. SDSTA shall bear the cost of any deductible applicable to its claim under the BR Policy. In the event multiple Insureds submit claims based on a single loss or occurrence, SDSTA shall bear a share of the applicable deductible determined by the ratio of its loss as fully adjusted by the insurance carrier(s) to the amount total loss as fully adjusted by the insurance carrier(s) or as determined by final adjudication under the terms of the BR Policy, as the case may be (before application of any deductible). For purposes of illustration, if the insurance carrier(s) adjust a total loss of \$15 million, but only \$10 million of that loss is on account of property owned by SDSTA, then SDSTA will bear 2/3 of the applicable deductible.

4. FRA will be the loss payee for all claims. In the event of a loss or occurrence to which the BR Policy applies, consistent with FRA's and the government's ability to terminate any contract for convenience, FRA will determine whether restoration or repair of work performed by TMI or KAJV is in the best interests of FRA and the government. As to proceeds attributable to damage to DOE Property and/or SDSTA Property:

(i) proceeds from a claim, as adjusted by the insurance carrier(s), shall first be paid over by FRA to SDSTA for damage to SDSTA Property;

(ii) if, after SDSTA is paid for SDSTA Property, any remaining proceeds shall be deemed to have been paid on account of DOE Property and shall be retained by FRA or as paid by FRA as directed by DOE;

(iii) if proceeds are to be divided between SDSTA and FRA under subsection (4)(ii) above, then the applicable deductible shall be applied on a pro rata basis. By way of example for the sake of clarity and not limitation, if the insurance carrier(s) pay \$15 million, but only \$10 million is paid on account of property owned by SDSTA, then SDSTA will bear 2/3 of the applicable deductible and FRA will bear 1/3 of the applicable deductible.

(iv) SDSTA reserves the right to restore or repair its damaged property and make a claim to the insurers for payment of the full replacement cost of such restoration or replacement, limited however to the sublimit payable under section of the declarations page of the BR Policy and further subject to the deductible for such damages. In accordance with section 2 above, FRA will cooperate with the making of such a claim, including submission of the claim.

(v) To the extent that the BR Policy includes coverage extensions for claims preparation expenses, or other similar coverages, the amounts FRA receives from insurer(s) shall apply to costs incurred directly by FRA for third party experts, outside attorneys, and other consultants before being divided among the Insureds on a pro rata basis based on the final value of

each Insured's claim (as fully adjusted by the insurers) under the sub-limit for the applicable coverage extension.

(vi) To the extent the BR Policy includes coverage for Contractor's Continuing Expenses, FRA will allocate amounts paid by insurer(s) on account of this coverage between KAJV or TMI in such amounts or proportions that FRA determines, in the exercise of its discretion.

(vii) In the event of a loss that results in claims of several or all Insureds that exceed the applicable limits of liability under the BR Policy, the amount payable on account of the loss, as adjusted, shall be paid to SDSTA pro rata based on the loss to SDSTA Property as compared to the overall loss, all as adjusted by the insurer(s). As to the remainder of the amount paid, FRA shall have sole discretion to allocate amounts received from insurer(s) on account of any claims between Insureds. In no event shall FRA be liable to any Insured for FRA's exercise of that discretion.

5. All other terms unrelated to builder's risk insurance the SDSTA Subcontract remain unchanged. There is no change to the SDSTA Subcontract price or SDSTA Subcontract time. as a result of this Agreement

IN WITNESS WHEREOF, FRA and SDSTA have caused this Agreement to be executed by their agents duly authorized the date and year set forth below the respective signatures.

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY
AUTHORITY**

FERMI RESEARCH ALLIANCE, LLC

BY: _____

BY: _____

TITLE _____

TITLE _____

DATE _____

DATE _____