

**STATE OF SOUTH DAKOTA**  
**OFFICE OF THE COMMISSIONER**  
**OF SCHOOL AND PUBLIC LANDS**

MINERAL LEASE NUMBER \_\_\_\_\_

This Mineral Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,(effective date) by and between:

**LESSOR:**

**LESSEE:**

OFFICE OF SCHOOL & PUBLIC LANDS  
500 EAST CAPITOL  
PIERRE, SD 57501

1. **GRANT OF LEASE.** For and in consideration of the payment of \_\_\_\_\_ (BONUS), payment of the first year's ANNUAL RENTAL pursuant to Paragraph 3 herein, the receipt and sufficiency of which Lessor hereby acknowledges; in consideration of the ROYALTIES to be paid and agreements to be performed by Lessee herein, and agreeing to post BOND pursuant to Paragraph 8 herein, Lessor hereby grants, leases and lets exclusively to Lessee, pursuant to SDCL Chapter 5-7 and subject to the terms and conditions set forth in this Lease, all minerals excluding oil, gas, coal and associated hydrocarbons, geothermal, water, sand and gravel ("Minerals") contained on or within the lands (the "Property") described as:

The Property contains \_\_\_\_\_ acres, more or less, and is situated in \_\_\_\_\_ County, South Dakota, and is School and Public Lands, Rural Credit Lands, or lands under which the Minerals are owned or held in trust by the State of South Dakota.

2. **RIGHTS GRANTED.** In connection with and as part of the leasehold estate hereby granted, Lessee shall have unrestricted access to, exclusive possession and quiet enjoyment of the Minerals and the overlying surface to the extent reasonable and necessary in connection therewith and the following exclusive rights; provided, however, that nothing set forth in this Lease relieves Lessee of its obligations to obtain and comply with any necessary permits, authorizations and licenses from other agencies or department of the State of South Dakota and as required pursuant to federal, state and/or local law and regulation:

(a) To explore, develop and mine ores and minerals on or in the property. Lessee may conduct such exploration, development and mining in any manner deemed by Lessee to be necessary or convenient, including without limitation: underground mining (including methods such as block cavings, which may result in the disturbance or subsidence of the surface), and other mining methods. However, this mineral lease prohibits surface mining (open pit mining and dredging) for uranium. Surface mining (including open pit mining and dredging) may be allowed when exploring and mining for other minerals. Provided, however, Lessee shall not carry out any mining method utilizing the injection of solutions underground for the purpose of extracting mineral, without the express written consent of the Lessor;

(b) To erect or construct, use, maintain, repair, replace and relocate on or in the property such buildings, ore bins, shafts, declines, inclines, tunnels, leach pads, stockpiles, roads, impoundments, pipelines, power lines, facilities, structures, machinery and equipment as Lessee may require or deem useful for the conduct of its operations on or in the property or other property;

(c) To temporarily store or permanently dispose of, on or in the property, all ores and Minerals, overburden, water, waste or other materials produced from the property or other property;

(d) To appropriate, develop, use, consume, drain and dispose of on or off the property, all water on the property;

(e) To use the property for surface and underground access for men, equipment, supplies, utilities and water, including use of all easements and rights-of-way, as may be necessary or convenient for the conduct of Lessee's operations on or in the property or other property, including access under, upon and across any other intervening or contiguous property owned or controlled by Lessor;

(f) To crush, screen, mill, beneficiate, concentrate, smelt, extract, refine, leach, convert or otherwise process or prepare for market on or off the property ores and minerals whether such ores and minerals were produced from the property or other property;

(g) To mine and remove ores and minerals from the property through any shafts, opening, or pits that may be made upon the property or other property and to use the property and any shafts, opening or pits made on the property for the mining or removal of ores and minerals from other property so long as such activity does not prevent or interfere with the mining or removal of ores and minerals from the property;

(h) To commingle ores and minerals from the property with other ores and minerals. Before commingling, Lessee shall weigh (or calculate by volume), sample and assay such ores and minerals in accordance with sound mining and metallurgical practices for moisture and payable content. Lessee shall keep records of such determination for one year after the end of the Lessee's fiscal year in which such determinations are made;

(i) To use any part of the property for stockpiles, tailings, waste dumps and leach pads and for any other purpose incident to mining, milling, processing and other operations on the property or other property and for the purpose of reclaiming, remediating, or cleaning up any disturbance, pollution, contamination, or other environmental problems on the property, including such reclamation and long-term care and monitoring as may be required with respect to Lessee's operations hereunder;

(j) To continue to keep this Lease in effect and use the property for mining, milling, treatment, processing, beneficiation, smelting, refining or storage of ores and minerals and other materials from other property with such use constituting the conduct of mining operations for purposes of Paragraph 3;

(k) To use so much of the surface of the property as is useful or necessary in connection with exploration, development, mining and processing of ores and minerals; and

(l) To exercise all other rights which are incidental to the rights expressly conveyed herein.

### **3. TERM, ANNUAL RENTAL AND ADVANCE ROYALTY PAYMENTS.**

(a) Term. (i) The term of this lease shall begin on the effective date and shall continue for a primary term of three years and as long thereafter as minerals in "paying quantities" (as hereafter defined) are produced or mined from the property, subject to the continued payment of \$1.00 per acre of annual rental.

Lessee shall be deemed to have commenced the production of minerals in paying quantities upon the commercial startup and continuation in operation for ninety consecutive days at 80% of rated capacity of any mineral recovery operation resulting in a saleable product if such operation includes the present or future mining of ores or minerals from the property on the basis of a feasibility study indicating the profitability of such an operation based on current or reasonably estimated future costs and prices. Once Lessee has commenced the production of minerals in paying quantities, production shall be deemed to have ceased on the earlier of (i) Lessee's written notice to Lessor that it intends to terminate all mining and processing operations on or with respect to ores and minerals from the property for not less than eighteen consecutive months or (ii) the actual cessation of such operations for eighteen months; provided, however, that the counting of time for purposes of determining when such production has ceased shall be tolled during any suspension pursuant to SDCL 5-7-53 as provided in Paragraph 6.

(ii) If Lessee fails to produce minerals in paying quantities during the primary term of this lease, Lessee may continue this lease in full force and effect for an additional or secondary term of two years and as long thereafter as minerals in paying quantities be produced or mined from the property, by paying each year two times the rental provided for in the primary term.

(iii) If Lessee fails to discover and produce minerals in paying quantities during the secondary term of this lease, Lessee of record or the record owner of an approved assignment may continue this lease, as to the portion held by him, in full force and effect for an additional or tertiary term of five years and as long thereafter as minerals in paying quantities be produced or mined from the property, by paying each year in advance \$3.00 per acre as rental per year as rental.

(iv) If Lessee fails to produce minerals in paying quantities during the tertiary term of this Lease, lessee of record or the record owner of an approved assignment may continue this lease, as to the portion held by him, in full force and effect for an additional or quaternary term of five years and as long thereafter as minerals in paying quantities be produced or mined from the property, by paying each year in advance of the lease anniversary date not less than ten dollars (\$10.00) per acre per year as rental.

(b) Rental. Promptly after Lessor's execution of this lease and on or before each anniversary of the effective date while this lease is in effect, Lessee shall pay Lessor annual rental in the amount required to be paid for such term unless such rental is suspended as provided for in Paragraph 6.

(c) Advance Royalty. (i) If Lessee has failed to produce minerals in paying quantities and has entered into the quaternary term of this Lease, then commencing upon the eleventh anniversary of the effective date and annually thereafter for four years so long as this lease remains in effect, Lessee shall pay Lessor, in addition to annual rental of \$10.00 per acre, advance royalty payments in the following amounts:

11th Anniversary	not less than \$10.00 per acre per year
12th Anniversary	not less than \$20.00 per acre per year
13th Anniversary	not less than \$30.00 per acre per year
14th Anniversary	not less than \$40.00 per acre per year
15th Anniversary	not less than \$50.00 per acre per year

(ii) Upon Lessee's commencement of production of minerals in paying quantities, any amounts paid as advance royalty for the lease year in which such minerals are produced and the advance royalty paid for the two previous years shall be a credit against the royalty payable to Lessor as provided in Paragraph 4; provided however that no such royalty shall be credited more than once.

(iii) Lessee's obligation to pay advance royalty shall cease on the 15th anniversary of the effective date.

(d) The payments as expressly required by this lease are in lieu of any obligation of Lessee, express or implied, to explore, develop or mine the property or to make any other efforts or expenditures in connection therewith.

4. **PRODUCTION ROYALTIES.** (a) In addition to the payment of annual rental and advance royalties, Lessee shall pay to Lessor a production royalty of not less than two percent of the gross returns from the sale of the minerals produced from the property and thereafter sold by Lessee. Gross returns are determined from the gross revenue received from the sale of mineral products derived from the property, less charges and costs, if any, for the following:

(i) transportation to places where ores and minerals are milled, treated, processed or otherwise beneficiated, smelted, refined and sold;

(ii) charges and costs, if any, for milling, treatment, processing, or other beneficiation, but excluding all mining costs; and

(iii) charges, costs and penalties, if any, for smelting, refining and marketing;

provided that in the event milling, treatment, processing or other beneficiation or smelting or refining are carried out in facilities owned or controlled, in whole or in part, by Lessee, charges, costs and penalties with respect to such operations, including transportation, shall mean reasonable charges, costs and penalties actually incurred by Lessee for such operations but not in excess of the amounts that Lessee would have incurred if such operations were carried out at facilities not owned or controlled by Lessee then offering comparable custom services.

In addition Lessee shall pay as royalty two percent of any premiums and bonuses received in connection with the marketing of ores and Minerals from the Property ("Premium Royalty").

(b) Lessor may, at its sole option, take the production royalty or premium royalty in kind, by providing sixty days written notice to Lessee. Lessee will make delivery of in-kind royalties, less reasonable adjustments to reflect any charges and costs as provided in Paragraph 4(a)(i)-(iii) to Lessor on the property.

(c) Payment of production royalty or premium royalty shall be made during the month following the month of sale of the minerals or receipt of the premiums or bonus. Each payment shall be accompanied by a statement showing weights and values of the minerals recovered and produced from the property during the period for which the payment is made, the calculations and the proceeds received if the ores and minerals were sold, the amount of any deductions, and the amount of any premiums and bonuses paid to Lessee. All statements shall be deemed true and correct. Lessor shall be entitled at Lessor's expense to an annual independent audit of the statement by a certified public accountant of recognized standing acceptable to Lessee.

(d) Lessee shall keep an accurate account of its mining operation described herein, including records of all ores and Minerals derived, removed and sold from the property. Lessor and any proper representative of the Lessor shall have the right upon twenty-four hours notice during the term of this Lease and for one year thereafter, to make reasonable inspections and examination of the books and records of the Lessee and the mining operation. Lessor agrees to comply with reasonable safety precautions as required by the Lessee in making inspections of the mining operation.

(e) All payments due hereunder (except in-kind royalties) may be made by check, draft, wire or electronic funds transfer sent or delivered on or before the date the same is due.

(f) All tailings, waste rock, and other residue resulting from Lessee's mining, extraction, milling, processing, dumping or other operations in or upon the Property shall be the sole and exclusive property of the Lessee, except as otherwise provided herein, and are subject to Production Royalty payments if processed, smelted, reduced or beneficiated and sold by Lessee.

**5. LESSER INTEREST, ROYALTY DISPUTES.** (a) If Lessor should own less than the entire ownership interest in the Property (even if a lesser interest is referred to herein), all rentals, advance royalties, production royalties and other amounts payable to Lessor shall be paid only in proportion to Lessor's actual ownership. If the Property or any part thereof should be subject to any royalty or interest in production other than those expressly reserved to Lessor herein, Lessee may deduct all costs and expenses it incurs by reason of such royalty or interest from amounts otherwise due Lessor.

(b) Lessee shall have no obligation to Lessor to protect or defend the title to the Property if any third person asserts any claim to the Property for any reason except Lessee's failure to perform obligations expressly required by this Lease.

(c) In the event of any dispute or question concerning the ownership of the Minerals, or any rental or royalty, payment or part thereof to be made by Lessee under this Lease, Lessee shall deposit the payment, or portion thereof that is in dispute if less than the whole payment, in escrow with an escrow agent agreeable to the parties hereto, until the dispute is finally resolved. The instructions for the escrow account shall include directions to the escrow agent to invest the deposited funds in a manner consistent with SDCL 5-10-18. Any payments placed in escrow shall be paid within fifteen days after Lessee has been furnished with original instruments, or certified copies thereof, finally disposing of or settling the dispute in a manner binding upon all interested parties.

(d) Neither Lessee's execution or performance of this Lease shall constitute an admission of or estoppel as to the validity of Lessor's title.

6. **SUSPENSION OF LEASE.** At any time after the commencement of commercial production of Minerals from the Property and in accordance with the provisions of SDCL 5-7-53, Lessee may request that Lessor suspend this Lease. The suspension shall be effective upon the date of the decision by the Commissioner of School and Public Lands and shall be for a specified period of time, which period shall not exceed five years. All of the obligations of the Lessee to make payment of annual rentals and/or advance royalties shall cease during such period of suspension. However, Lessee shall pay Lessor annually in advance on or before each anniversary date of the effective date of such suspension a suspension payment of not less than sixty dollars per acre.

7. **OPERATIONS.** (a) Lessee agrees to conduct its operation in substantial compliance with all applicable laws, ordinances, and regulations of any governmental entity having jurisdiction over Lessee's operation, and in compliance with generally accepted mining practices of the minerals, or the property, including but not limited to those laws, ordinances, and regulations pertaining to mine safety and health and environment.

(b) Lessee intends to mine, and agrees to market all minerals produced under this lease within a reasonable time after production.

(c) Before any mining operation is commenced hereunder, Lessee will provide Lessor with a reclamation plan for the Property as approved by the South Dakota Board of Minerals and Environment.

8. **BOND.** Before any lessee of minerals commences development or operations upon the lands, such lessee shall execute and file with the Commissioner a good and sufficient bond or undertaking in an amount to be fixed by the Commissioner, but not less than five thousand dollars, in favor of the state of South Dakota, for the benefit of any surface lessee, patentee or contract purchaser, to secure the payment for damage to livestock, water, crops or other tangible improvements on such lands as may be suffered by reason of development, use and occupation of such lands by the mining lessee. However, any lessee owning one or more mining leases may file a blanket bond in an amount to be fixed by the Commissioner, but not less than ten thousand dollars, according to SDCL 5-7-57. Lessee shall be required to present to the Commissioner of School and Public Lands in writing (a) an acceptable bonding method; and (b) a plan of development, exploration and production upon the property, prior to the commencement of any such activity. The bond amount will be set accordingly.

If any surface lessee, patentee or contract purchaser files with the Commissioner a waiver duly executed and acknowledged by him of his right to require such bond, such development or occupation and use of the lands by a mineral lessee may be permitted without providing for the bond. This bond is in addition to any required by any other statute.

9. **RELEASE OF DATA.** In the event Lessee assigns its interest in this Lease or upon the written request of Lessor within six months of Lessee's termination of this Lease, Lessee shall supply to Lessor copies of any noninterpretive core analysis, drill hole logs, and assays taken from the Property ("Data"). Lessee makes no representation or warranty as to the accuracy or completeness of any such Data and shall not be liable on account of any use thereof by Lessor or any other person. Lessee shall not be responsible for any loss or destruction of drill core.

10. **CONFIDENTIALITY.** Lessor agrees to the extent permitted by SDCL §§ 37-29-1(4), 45-6B-19, 45-6C-14, 45-6D-15, and 45-6D-42, to keep all data and other information provided by Lessee to Lessor confidential and agrees not to make any disclosure not required by said statutes without the prior written consent of Lessee.

11. **TAXES.** Lessee shall be responsible for and pay all severance or other taxes, fees, charges, levies or assessments assessed against, occasioned by, or attributable to the Minerals, the mining, equipment, improvements, fixtures, personal property or actions of the Lessee pursuant to this Lease.

12. **INDEMNIFICATION.** (a) Lessee agrees to hold Lessor, its officers, agents or employees harmless from any and all claims, damages or liability of any kind or character whatsoever, arising from or related to Lessee's activities on the property, except such claims or liabilities caused by the negligence or willful misconduct of Lessor, its

officers, agents or employees. Lessee agrees that such indemnification shall include all costs and reasonable attorney fees incurred by Lessor in defending against any such claim.

(b) Lessee agrees to maintain during the term of this lease, at its sole cost and expense, general liability, worker's compensation, and other insurance with coverage and with limits as is customary in the industry or required by state law, and agrees to provide proof of such insurance to Lessor.

(c) Lessee shall pay all expenses and charges for which it becomes liable in connection with its operations on the property and shall hold Lessor harmless from all claims and liens arising out of such operations.

13. **ASSIGNMENT.** Lessee may assign in whole or in part this Lease in accordance with SDCL 5-7-61 upon the prior written consent of the Commissioner, which consent shall not be unreasonably withheld. Lessee may not, however, assign less than a legal subdivision of the property. The effect of any such assignment shall be in accordance with SDCL 5-7-29.

14. **SURRENDER.** Lessee may release and surrender to Lessor any legal subdivision of the property by delivering to Lessor thirty days prior written notice describing that portion of the Property to be released or surrendered. Acreage so released and surrendered shall thereafter be excluded from the Property for all purposes of this lease, including the payment of rentals, advance royalties and suspension payments. Nothing herein shall relieve Lessee of any obligation or deprive Lessee of the right to perform any obligation (i.e. reclamation) imposed by its mining permits, reclamation plan or any other permits or licenses issued by any department, agency or subdivision of the State of South Dakota with reference to the Property or the mining operations.

15. **CANCELLATION BY LESSOR.** Lessor may cancel this Lease for nonpayment of annual rentals or advance royalties or for Lessee's material violation of any of the terms, covenants or conditions of this Lease in accordance with SDCL 5-7-60. Lessor shall first deliver to Lessee written notice of Lessor's intention to cancel this Lease, specifying the default for which this Lease is subject to cancellation. Thirty days thereafter, Lessor may cancel this Lease unless Lessee has either contested in good faith or has commenced remedying the default. Cancellation of this Lease does not relieve the Lessee from liability for payment or performance of other Lease obligations that have already occurred and does not relieve the Lessee from compliance with any permit or license issued for the Property or the mining operation.

16. **FORCE MAJEURE.** (a) Lessee's failure to perform or comply with any of the covenants, terms or conditions of this lease by reasons of force majeure shall not be a default or grounds for cancellation. Force majeure means any cause or condition beyond Lessee's reasonable control during which Lessee's failure to perform or comply is caused by severe weather, explosion, unusual mining casualty, damage to or destruction of mill or mill plant facility, fire, flood, civil or military authority, insurrection, strikes, riots, fuel shortages not due to the negligence or lack of diligence by Lessee, acts of God, the failure to obtain regulatory or environmental permits to explore, develop and mine on terms reasonably satisfactory to Lessee, or any other circumstance or condition beyond the control of Lessee. Should Lessee claim the existence of force majeure, it shall promptly notify Lessor in writing, describing the estimated extent of delays likely to result therefrom. Lessee shall similarly notify Lessor of the cessation of delays resulting from force majeure. The then current term of this Lease shall be extended for a period equal to the duration of the period of force majeure.

(b) Lessee shall use reasonable diligence to resume its obligations and mining operations under this Lease after a period of force majeure.

(c) Lessee shall have the right, but not the obligation, to determine and settle at its sole discretion, any strike, lockout, or labor dispute.

(d) Notwithstanding any of the above, Lessee shall not be excused from the obligation to make any payments arising under this Lease during the period of force majeure.

17. **POST SURRENDER AND POST CANCELLATION OBLIGATIONS.**

(a) Upon surrender or cancellation of this lease, Lessee shall surrender possession of the property to Lessor and shall execute and deliver to Lessor a recordable written release of all of Lessee's right, title and interest in this lease, unless in the case of cancellation Lessee challenges the validity of such cancellation in good faith.

(b) Except as necessary to comply with applicable reclamation plans, statutes, rules, permits or licenses, upon surrender, cancellation, expiration, or other termination of this lease, the Lessee shall remove all of Lessee's buildings, improvements, fixtures, machinery and equipment (collectively equipment) as can be removed without material injury to the premises by the date determined by Lessor in accordance with SDCL 5-7-62 (removal date). All annual rentals and advance royalties shall continue to be paid to Lessor until

- (i) Lessee provides written notice to Lessor that it does not intend to pay; and
- (ii) Lessee has removed all such equipment. All equipment not removed by the removal date shall be forfeited without compensation to Lessee. Lessee shall take appropriate steps to maintain and leave the property in a safe and orderly condition and to protect against injury or damage to persons or property.

18. **TAILINGS, WASTES AND OTHER RESIDUES.** All tailings, wastes and other residues resulting from Lessee's extraction, beneficiation, leaching, milling, processing, dumping or other operations upon the property may remain on or in the property following termination, cancellation, surrender or expiration of this lease only if such action is consistent with and done in compliance with Lessee's mining permit and reclamation plan. Lessee shall indemnify Lessor for environmental liability arising out of such tailings, wastes and other residues. Nothing herein is intended to relive Lessee of any responsibility or liability for pollution or other damage caused by Lessee's mining operation or activities under this Lease.

19. **NOTICES.** Any notice required or permitted to be given hereunder shall be deemed properly given when hand delivered; when mailed, postage prepaid, by registered or certified mail, return receipt requested; when deposited with an express courier; or if transmitted by facsimile; if transmitted by facsimile, such notice shall be effective the day after such transmission. All such notices to the parties shall be given at the following addresses. Routine or regular periodic reports and statements may be sent by regular mail.

**LESSOR:**  
OFFICE OF SCHOOL & PUBLIC LANDS  
500 EAST CAPITOL  
PIERRE, SD 57501

**LESSEE:**

20. **UNENFORCEABLE PROVISIONS.** In the event that any court or administrative body of competent jurisdiction determines that any part, term or provision of this Lease is unenforceable, illegal or in conflict with any state, federal or local law, then such part, term or provision shall be considered severable from the rest of this lease and the remaining provisions of this lease shall not be affected, and this lease shall be construed and enforced as if it did not contain such part, term or provision.

21. **GOVERNING LAW.** This lease shall be governed by, construed and enforced in accordance with the laws of the state of South Dakota.

22. **MODIFICATION.** This Lease, together with its exhibits, contains the entire agreement made by and between Lessor and Lessee, and no oral agreement, promise, statement or representation which is not contained herein shall be binding on the parties. This lease shall not be modified or amended except by a writing signed by the parties.

23. **RELATIONSHIP OF PARTIES.** Nothing contained in this Lease shall be construed or deemed to create or constitute between the parties a joint venture, mining partnership, commercial partnership or other partnership relationship or the relationship of principal and agent.

24. **COUNTERPARTS.** This lease may be executed in any number of counterparts, each of which shall be deemed to be an original.

25. **BINDING EFFECT.** (a) All covenants, conditions and terms of this lease shall be of benefit to, and shall run with, the Property and shall bind and inure to the benefit of the parties and their respective successors and assigns.

(b) The implied obligations of good faith and fair dealing shall not be applied or construed so as to prevent any party from claiming or enforcing any right, benefit, remedy, excuse or limitation of liability expressly provided by this Lease.

IN WITNESS WHEREOF, the undersigned have executed this Lease.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF SOUTH DAKOTA, LESSOR

By \_\_\_\_\_  
Commissioner of School and Public Lands

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
Lessee

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledge that he executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.

(SEAL)

My commission expires \_\_\_\_\_  
Notary Public

Lease Number \_\_\_\_\_