

Akaitcho Exploration Agreement

THIS AGREEMENT is made with effect as of the ____ day of _____ (the "Effective Date")

BETWEEN:

<First Nation>

-AND-

<Company>

(In this Agreement "Party" means either the First Nation or Company and "Parties" means both of them.)

RECITALS:

1. The <First Nation> asserts certain aboriginal and Treaty rights, title and interests (the "Aboriginal Rights") in and to the Akaitcho Territory. The Akaitcho Territory is defined as an area of land in the Northwest Territories (NT) which is more particularly described in Schedule "A.2" and attached and made a part of this Agreement.
2. The Aboriginal Rights, as asserted by the <First Nation>, are protected by s.35 of the *Constitution Act, 1982*, which are currently the subject of treaty implementation negotiations between the Akaitcho Dene First Nations and the Government of Canada;
3. <Company> wishes to explore mineral properties consisting of mining claims located _____ (the "Property"), which are situated within the Akaitcho Territory. The Property is more particularly described in Schedule "A.1", which is attached and made a part of this Agreement;
4. <Company> recognizes that the Aboriginal Rights include the right to be consulted when development will or may affect the Aboriginal Rights;
5. <Company> recognizes that its exploration activities may affect the <First Nation>, their traditional lands, their relationship with the land, water and resources, their social and cultural values, their way of life and the environment, and wish to take positive steps to mitigate impacts to the environment and traditional lifestyles and will strive to develop a respectful relationship with the <First Nation>;
6. The First Nation recognizes <Company>'s desire to conduct mineral exploration and to do so in a manner that is respectful of the <First Nation>, their Aboriginal Rights, their Traditional Territory, their relationship with the land, water and resources, their social and cultural values, their way of life and the environment;

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7. The <First Nation> supports the advancement of <Company>'s activities on the terms and conditions set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective agreements and commitments herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree that the exploration activities by <Company> on the Property shall be carried out according to the terms and conditions of this Agreement which includes the attached Schedules A to F (the "Agreement"):

- 1) <Company> acknowledges and agrees that this Agreement relates to the exploration activities (the "Exploration Program") outlined in Schedule B and that any exploration activities on the Property not described in Schedule B shall require further agreements or amendments by the Parties under such terms and conditions mutually agreed to by the Parties as may be set out as further schedules or amendments to this Agreement.
- 2) <Company> agrees that it shall not commence commercial mining and/or production within the Traditional Territory without the consent of the <First Nation>, such consent to be obtained through the negotiation of an impacts-benefits agreement between the Parties, the ratification of that agreement by the members of <First Nation> in a manner to be determined by <First Nation>, and the execution of a final impacts-benefits agreement by the Parties. This provision does not limit <Company>'s ability to seek regulatory authorizations under the provisions of the Mackenzie Valley Resource Management Act and/or the Territorial Lands Act, or the <First Nation>'s ability to request that an environmental assessment of the Exploration Program be conducted. <Company> agrees to pay the reasonable costs incurred by <First Nation> in negotiating, ratifying and executing the impacts-benefits agreement.
- 3) <Company> recognizes that the <First Nation> requires accurate, complete and timely information at all stages of the Exploration Program to decide if their Aboriginal Rights are affected. <Company> commits to keep the First Nation fully informed through face to face consultation (the "Consultation") and at a minimum, to provide reports to the First Nation with respect to any actual or potential impacts that may be determined with respect to Aboriginal Rights on a quarterly basis during times of active exploration on the Property. <Company> will also brief the First Nation about any significant results of exploration activities on a quarterly basis.
- 4) The Consultation referred to in Section 3 above between <Company> and the <First Nation> shall be undertaken by <Company> generally as follows with respect to all aspects of <Company>'s Exploration Program:
 - (A) <Company> will gather information from the <First Nation> to assess if the planned Exploration Program's policies, procedures and/or processes (the "Procedures") will negatively affect Aboriginal Rights and agrees to modify or redesign these Procedures as required as a result of the Consultation process;

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- (B) <Company> will fully disclose information upon which Procedures are based to the <First Nation>;
 - (C) <Company> will give the First Nation sufficient time to research, consider and respond to the Procedures;
 - (D) <Company> will be prepared to alter the original Procedures to eliminate or minimize impacts upon Aboriginal Rights or to protect the environment and cultural sites;
 - (E) <Company> will cover the reasonable costs of Consultation.
- 5) The <First Nation> appreciates some of the information to be disclosed by <Company> during Consultation under this Agreement may be confidential information. The <First Nation> hereby agrees to keep such designated information confidential and to restrict the knowledge of such confidential information on a need-to-know basis, provided however that <First Nation> shall be entitled to refer to and rely upon any information acquired from <Company> when it is involved in any consultation with the Government of Canada regarding any actual or potential impacts upon Aboriginal Rights, and also in any court proceeding that may arise in relation to the environment and cultural sites or Aboriginal Rights. Persons with knowledge of such confidential information may be considered insiders under security regulations. Subject to the above, all matters concerning the execution and contents of this Agreement and the Properties shall be treated as and kept confidential by the <First Nation> and there shall be no public release of any information concerning exploration activities or results by the <First Nation> without the prior written consent of <Company>, such consent not to be unreasonably withheld. <Company> and the <First Nation> shall both be entitled to review and comment on press releases originating with the other Party regarding the Properties or this Agreement for a period of at least two (2) full business days prior to their issuance.
- 6) <Company> recognizes the value of the First Nation knowledge and perspectives with respect to their relationship with the land, water and resources, their social and cultural values, their way of life and the environment; and commits to support the collection and incorporation of such perspectives and knowledge into planning, management and operational decisions. <Company> therefore agrees to the Monitoring Protocol attached as Schedule C. The First Nation Monitor referred to in that agreement will monitor environmental and cultural impacts and actual or potential impacts upon Aboriginal Rights, and may require <Company> to undertake measures if necessary to eliminate or minimize impacts upon Aboriginal Rights or to protect the environment and cultural sites. The First Nations Monitor is also authorized by the <First Nation> and <Company> to monitor <Company>'s obligations under Sections 7 and 8 below. The First Nations Monitor is authorized by the <First Nation> and <Company> to report any activities which threaten the environment and cultural sites or which will or may affect Aboriginal Rights and <Company>'s obligations under Sections 7 and 8 below. If no action is taken or if immediate action is required because of likely environmental harm or actual or potential impacts upon Aboriginal Rights, the First Nations Monitor is authorized to suspend activities that threaten the environment or cultural sites or are otherwise not

in compliance with Section 10 below, or which will or may have actual or potential impacts upon the exercise of Aboriginal Rights.

- 7) <Company> agrees to use its best efforts to provide employment and/or training opportunities for <First Nation> members, and directly negotiate business opportunities with <First Nation> businesses wherever these businesses can demonstrate capacity and competitiveness. A list of representative employment and business opportunities is provided in Schedule D, but this list shall not be considered to be exhaustive.
- 8) In third-party contracts for exploration work and related activities, <Company> shall request, and where reasonable require, its contractors and sub-contractors to provide employment and/or training opportunities for <First Nation> members, and whenever bids are competitive, priority will be given to <First Nation> businesses and/or contractors and sub-contractors providing employment and/or training opportunities for <First Nation> members, and shall monitor its contractors and sub-contractors regarding compliance with this Section.
- 9) If, as a result of the Exploration Program as outlined in Schedule B attached, further exploration or mining activities require environmental assessment as determined by the Mackenzie Valley Resource Management Act, <Company> agrees to fully involve the First Nation in developing and conducting environmental baseline studies related to the environmental assessment. Before such studies are undertaken <Company> agrees to negotiate an agreement with the First Nation on the conduct of this work.
- 10) <Company> agrees that where negative environmental and cultural impacts or actual or potential impacts upon Aboriginal Rights are predicted, exploration will be conducted so as to avoid or mitigate such impacts. In areas on the Property where there are insufficient data regarding potential impacts, exploration may be suspended in the immediate area of concern until there are adequate data to ascertain the nature and severity of the impact. Through Consultation, <Company> and the <First Nation> will attempt to come up with a plan to mitigate such impacts, however, should the Parties not be able to agree on a plan to mitigate such impacts, <First Nation> can order the suspension of the Exploration Program. Further decisions or Procedures developed by <Company> on avoidance or mitigation of impacts must be approved by the <First Nation>, which approval shall not be unreasonably withheld.
- 11) <Company> agrees to be held liable for immediate and/or future environmental damage and actual impacts upon Aboriginal Rights caused by their activities. <Company> agrees, where possible, to clean up and reclaim the exploration sites and other areas affected by their activities on the Property so as to restore these sites and areas as closely as possible to their original condition, and at a minimum, to meet applicable regulatory requirements.
- 12) Pursuant to Paragraph 11 above, <Company> understands and agrees that the <First Nation> have a right to Consultation on activities as it relates to this Agreement and the Property and, if determined, compensated for infringements and/or damages (the "Accommodations"). <Company> agrees that all Consultation and, if necessary Accommodation, shall be conducted exclusively by and through the properly designated representatives of the <First Nation>, as appointed from

time to time, and that there shall be no Consultation with and no payment of Accommodation to any individual member or members of the <First Nation>, without the express written consent of the <First Nation>.

- 13) The Parties will each designate their own representatives responsible for supervising and monitoring the implementation and regulation of this Agreement. Such designations or any substitutions shall be made in writing to the other Party under the notice provisions of this Agreement.
- 14) Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered to the Party to which it is given or sent by mail, electronic mail or facsimile transmission to:
 - <Company> Address

 - <First Nation> Address
- 15) The Parties shall endeavour to amicably resolve, by negotiation, any dispute which arises between them in connection with this Agreement within 30 days of receiving notice of a dispute. The Parties will make *bona fide* efforts to resolve any dispute by amicable negotiations and the Parties agree to provide, without prejudice, frank, candid and timely disclosure of all relevant facts, information, and documents to facilitate such resolutions.
- 16) If the <First Nation> believes that there has been substantial non-compliance with the terms or conditions of this Agreement, it will give <Company> written notice of such non-compliance, and <Company> agrees to cease all exploration activities on the Property until the <First Nation>'s concerns are resolved in accordance with the mediation or arbitration provisions of Section 17.
- 17) Any issues the Parties have failed to resolve under Section 15 within 30 days or matters of substantial non-compliance for which notice is given under Section 16 shall be submitted to mediation by a mediator selected by the Parties. If mediation fails to resolve the matter in dispute within 15 days, the matter in dispute may be submitted to arbitration by either Party in accordance with the provisions of the <applicable arbitration statute>. The Parties shall seek to jointly select a mutually agreeable arbitrator to settle the dispute within 15 days of a failure to resolve the matter by mediation, failing which each party shall appoint an arbitrator, and the arbitrators shall agree on a third arbitrator and shall commence a hearing on the matter in dispute to within 30 days of a failure to resolve the matter by mediation. The award on the matter in dispute shall be in writing and shall be final and binding upon the Parties and no appeal shall be taken therefore. The cost of arbitration shall be borne by the Parties equally.
- 18) Notwithstanding Paragraphs 15, 16 and 17 above, a Party has the right to commencing legal proceedings at any time to obtain an order for damages or an interim or permanent order for the protection or preservation of Property rights of either Party or other interests, including Aboriginal Rights, that are the subject matter of a dispute or to prevent the loss of the right to commence proceedings due to the expiration of a limitation period.

- 19) This Agreement is a legally binding contract and shall be governed by, interpreted, construed, and enforced in accordance with the laws of the Government of the Northwest Territories and the federal laws of Canada applicable therein.
- 20) This Agreement shall enure to the benefit of and be binding on and enforceable by the Parties and their respective successors and assigns. <Company> further agrees to ensure that its commitments under this Agreement shall be binding on any partners, subcontractors or agents with respect to any work or services performed or supplied in connection with the mineral exploration at Properties. <Company> will incorporate such relevant terms and conditions into all agreements that may be entered into by <Company> with any other parties in relation to the mineral exploration at Properties.
- 21) <Company> may assign all or part of its interest in this Agreement to <other person, exploration or mining company> so long as the successor or assign agrees to accept, be bound by and abide by the terms of this Agreement as if it were signatory to the same. <Company> shall require any successor or assign to assume all of the covenants, obligations and liabilities of <Company> under this agreement. <Company> shall be released from its covenants, obligations and liabilities under this agreement once all of the conditions referred to in this Section have been met.
- 22) The term of this Agreement shall come into force on the date of its execution and remain in force until terminated by written agreement of the Parties or on the completion by <Company> or its successors or assigns of all reclamation and decommissioning obligations subsequent to the reversion or surrender of any licences held by <Company> within the Traditional Territory of the First Nation and the fulfillment by <Company> or its successors or assigns of all obligations under this Agreement.
- 23) In the event that any provision of this Agreement is declared to be invalid, unenforceable or otherwise contrary to law by any court of competent jurisdiction, the invalidity, unenforceability or legality of such provision shall not affect the validity, enforceability or legality of any other provision, each provision is hereby declared to be separate, severable and distinct, and this Agreement shall continue in force in accordance with the remaining provisions hereof; and the Parties shall use their best efforts to negotiate an alternative provision which achieves the objectives of the provision so declared to be invalid, unenforceable or otherwise contrary to law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of <date>.

First Nation

By:

Chief

Councillor

Akaitcho Exploration Agreement

Councillor

Councillor:

<Company>

Per:

Authorized Signatory

Per:

Authorized Signatory

Schedule A

A.1 Map showing Properties

A.2 Map showing <First Nation> Traditional Territory

Schedule B

Exploration Program

Schedule C

Monitoring Protocol

Schedule D

Employment and Business Opportunities

SCHEDULE A.1

to the Agreement dated _____ between
First Nation and
<Company>

MAP SHOWING LOCATION OF THE PROPERTIES

SCHEDULE A.2

to the Agreement dated _____ between
the First Nation and
<Company>

MAP SHOWING TRADITIONAL TERRITORY OF FIRST NATION

SCHEDULE B

to the Agreement dated _____ between
the First Nation and
<Company>

Exploration Program

Schedule B shall comprise of Schedule B-1 plus subsequent Schedules B-2, B-3, B-4, etc., to be added for subsequent exploration programs on the Properties.

Schedule B-1

SCHEDULE C

to the Agreement dated _____ between
the First Nation and
<Company>

MONITORING PROTOCOL BETWEEN THE <First Nation> AND <Company>

1. The <First Nation> and <Company> agree that monitoring of <Company>'s Exploration Program activities on the Property will be carried out by an First Nation Monitor (the "Monitor"), who will have the following duties:
 - a. To monitor the activities on the Properties and provide the First Nation with up-to-date information on activities relating to environmental, cultural, spiritual, economic, and aboriginal and Treaty rights protection;
 - b. To determine if regulatory requirements are observed with respect to environmental, cultural, spiritual, and economic protection and to monitor actual or potential impacts upon Aboriginal Rights;
 - c. To monitor <Company>'s compliance with its obligations under Sections 8 and 9 of the Traditional Territory Exploration Agreement;
 - d. To provide reports following each monitoring trip to the First Nation and <Company> as described below;
 - e. To keep the communities of the AKFN informed;
 - f. To monitor environmental conditions, wildlife, and fisheries and any actual or potential impacts upon Aboriginal Rights in a manner useful to the First Nation;
 - g. To monitor and advise upon the preservation of archaeological and ethnohistorical sites in the vicinity of the Exploration Program activities;
 - h. To attend meetings between First Nation and <Company> as required.
2. In the interests of coordinating activities, and to seek to ensure that a high level of environmental, cultural, spiritual, and economic and aboriginal and Treaty rights protection is achieved, the Parties will maintain open and regular communication. <Company> shall designate a person or persons who are regularly present on the Properties when the Exploration Program is taking place and who have responsibilities for environmental and Aboriginal Right protection to provide the Monitor with briefings to enable the Monitor to fulfill his/her mandate.
3. Site supervisory staff will undertake to include the Monitor (by telephone or during site visits) in regular and emergency briefings related to safety and environmental and aboriginal and Treaty rights matters and to relay to the Monitor on a timely basis important information about site activities pertaining to health, safety, environment and Aboriginal Rights matters.

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4. The Monitor may advise the site supervisory staff of issues of concern at any time. When environmental or Aboriginal Rights issues deserving immediate attention are discovered, the Monitor will report directly to <Company> and First Nation. As soon as possible after such an issue is reported, the Monitor will provide a written report of the concern to the First Nation and <Company>, with the intention of ensuring that the earliest attention is given to environmental or Aboriginal Rights concerns.
5. The Monitor will periodically provide reports on relevant observations and recommendations to <Company>.
6. In the conduct of his/her duties, the Monitor will adhere to all applicable rules and Procedures established by <Company>.
7. The Monitor will be an employee of the First Nation or its designate. <Company> will pay the First Nation \$XXX per day the Monitor is visiting the Properties to cover the cost of salary, benefits, and expenses associated with the First Nation's employment of the Monitor. Such expenses will include supplies and minor equipment purchases. Travel and accommodations for site visits will be provided by <Company> at <Company>'s expense. <Company> will retain a wildlife biologist in relation to the activities described in section 10. The use of Company-provided transportation at the site will be on a shared-use basis and, subject to sections 13 and 14; the Monitor shall be accorded priority.
8. While the Monitor is at the site, <Company> will provide for meals and accommodations to the standard available from the camp facility pursuant to <Company>'s accommodations and site transportation policy.
9. Subject to section 11, upon providing reasonable advance notice to <Company>, the Monitor will visit the Property upon start-up of a program, once upon the completion of a program, and as frequently as is felt necessary by the Monitor to properly fulfill the Monitor's obligations and responsibilities under the Exploration Agreement and this agreement, up to once per month. The first visit for each program will include a survey for sensitive wildlife habitat with a qualified wildlife biologist, if existing baseline studies are deemed to be insufficient. If the Monitor deems it necessary, a second visit by the wildlife biologist will occur during operation of the exploration program. For greater clarity, program means the exploration activities described on an annual basis in Schedule B.
10. In the event of an environmental incident or an incident involving any actual or potential impact upon the environment or the exercise of Aboriginal Rights, the Parties agree that the Monitor may be required to visit the site more than the number of times referred to in s.10. If an environmental or Aboriginal Rights incident occurs, the Monitor shall attend the site as required to ensure adequate clean-up, and <Company> shall compensate First Nation at the rate of \$XXX per day for visits to the site for the associated costs of the Monitor for salary, benefits and expenses. Travel and accommodations for any additional site visits will be provided by <Company> at <Company>'s expense.

11. With the exception of an environmental or Aboriginal Rights emergency, all trips to and from a site by the Monitor will be planned in conjunction with scheduled site service trips.
12. Subject to section 14, <Company> will take reasonable steps to make available on-site transportation within the Properties to enable the Monitor to carry out his/her work. In the event of an emergency, safety and medical personnel will have priority.
13. Site visits by the Monitor will be scheduled to not conflict with drill rig, core and crew moves, or other health and safety considerations.
14. <Company> will provide a hand-held radio or other safety communication device to the Monitor for use in the field.
15. The Monitor will be notified immediately by site management in the event of any reportable environmental spills or incidents or any incident involving Aboriginal Rights.
16. The Parties intend that the Monitor will be able to conduct independent observations of site activities for the purpose of environmental or Aboriginal Rights auditing. The Parties recognize that, if drilling is to take place, this audit function will require visits by the Monitor to drill sites or other areas of environmental or Aboriginal Rights concern.
17. This environmental and Aboriginal Rights monitoring agreement shall be reviewed annually by the Parties, and amended as necessary to ensure the Monitor is able to carry out his duties effectively in light of the proposed Exploration Program for that year.

SCHEDULE D

to the Agreement dated _____ between
the First Nation and
<Company>

Aboriginal Business and Employment Opportunities

<Company> intends to carry out Exploration Programs as outlined in Schedule B

There will be employment and training opportunities for First Nation members during <activities> as outlined in Schedule B. As field programs are short and costs of supporting field personnel in remote areas are very high, trained experienced crew are required on site for certain aspects of the operation. First Nation business opportunities will include <list specific areas of existing capacity or interest>

SCHEDULE F

to the Agreement dated _____ between
the First Nation and
<Company>

Agreement in Respect of the Conduct of Archaeological Studies Between the First Nation and <Company>

1. <Company> has retained an accredited archaeologist ("Archaeologist") that has been approved by the First Nation, to carry out a field examination and study ("the Study") on the Property. The basis of such Study, which may also be a requirement by <applicable legislation> (the "Act"), and the First Nation, is to determine the existence of any archaeological sites or cultural remains (the "Sites or Findings") of the First Nation aboriginal people located on the Property. The Archaeologist shall be authorized to retain one First Nation member as a Co-researcher to provide assistance in carrying out the fieldwork and other research as determined by the Archaeologist. <Company> will be responsible for the remuneration of the Archaeologist and the Co-researcher.
2. The Archaeologist may carry out a field examination of the Property either prior to commencement or during any Exploration Program and upon completion will immediately advise <Company> and the First Nation that the Property has been surveyed. The Archaeologist will produce a final report (the "Archaeological Report") within 90 days of completion of the field examination of the Property.
3. The First Nation agrees that <Company>'s Exploration Program can commence on the Property prior to the completion of the Study provide specific sites of Exploration Program activity have been surveyed by the Archaeologist and no significant potential Sites or Findings are reported.
4. The First Nation agrees to provide the Archaeologist with such available ethnohistorical data as he/she may require, and as the First Nation may possess, in order for the preparation of a complete and accurate written Archaeological Report in respect of the Study. <Company> will pay to the First Nation a reasonable amount to recover its costs incurred to prepare and provide such ethnohistorical data and analysis provided to the Archaeologist by the First Nation, provided the data is not in the public domain and in the opinion of the Archaeologist and <Company> the data will help to facilitate the completion of the Archaeological Report. The amount of compensation will be negotiated between the First Nation and <Company> according to industry practice on the basis of actual costs incurred in preparing and providing this data.
5. <Company> agrees to provide the Archaeologist with a copy of the Exploration Program to include exploration plans, drill targets, and other information as may be necessary to enable the Archaeologist to assess all areas of potential activity which may result in surface disturbance.

6. Upon receipt of the Archaeological Report, the Parties shall have the right upon request to have direct access to all research data of the Archaeologist to confirm any Sites or Findings that may be identified in the Archaeological Report and for no other purpose.
7. The First Nation and <Company> will be notified by the Archaeologist of all Sites or Findings immediately.
8. No excavation of any Sites or Findings will be undertaken without the consent of the applicable Government authority, the First Nation and <Company>.
9. <Company> will involve the First Nation in all efforts to avoid or mitigate damage to any Sites or Findings as a result of the Study on the Property.
10. Upon completion of the Archaeological Report, the Archaeologist shall provide a copy of same to each of the First Nation and <Company>.
11. <Company> will advise the Archaeologist that his or her retention by <Company> is subject to the provisions of this Agreement;