

ECONOMIC AND COMMUNITY DEVELOPMENT AGREEMENT

This Agreement is dated the 12th day of June, 2012

BETWEEN

HER MAJESTY THE QUEEN

IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

as represented by the Minister of Aboriginal Relations and Reconciliation
("British Columbia")

and

NAK'AZDLI FIRST NATION

as represented by its Chief and Council
("Nak'azdli")

(each a "Party", together referred to as the "Parties")

Whereas the Parties recognize and respect the following:

- a. The Parties will utilize this Agreement to respect to each others' interests, while developing a successful long-term working relationship; and
- b. The Parties have undertaken a shared commitment to strengthening relationships on a government to government basis.

Now therefore the Parties agree as follows:

Section 1 Definitions

"Access Roads" means those existing roads built or improved for the purpose of access to the site of the Project or for the removal of ore from the Mine Site and include a portion of the Rainbow FSR, the Connector Road and Phillips FSR and access to load out facilities but does not include any new roads, modifications, or expansions into Nak'azdli's Reserve;

"Agreement" means this Economic and Community Development Agreement;

"Annual Payments" means the payments to be made by British Columbia to Nak'azdli each year pursuant to section 3, and "Annual Payment" means any one such payment;

"BC Fiscal Year" means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

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“Consultation and Accommodation Process” means, in relation to the Project, (i) the consultation and accommodation process set out in section 5.1(b), which is the means by which Provincial Agencies will fulfill any consultation and accommodation obligations relating to any Government Actions related to the Project that may impact Section 35 Rights after the Effective Date of the Agreement, or (ii) the consultation and accommodation process which is contained in the protocol referred to in section 8.7 and which will, when said protocol comes into effect, replace the process set out in section 5.1(b);

“Council” means the Nak’azdli Band Council;

“Effective Date of the Agreement” means the date upon which this Agreement has been signed by both of the Parties;

“Fiscal Year of the Mine” has the same meaning as in the *Mineral Tax Act*;

“Government Actions” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever entered into or otherwise taken by a Provincial Agency in relation to the Project at any time either before or after the Effective Date of the Agreement;

“Holdback” has the meaning given to that term in section 3.3;

“Member” means a member of Nak’azdli as defined by the Nak’azdli Membership Code;

“Nak’azdli” means the Nak’azdli First Nation;

“Mine Fiscal Year” means a Fiscal Year of the Mine during which the Proponent is an Operator of the Project;

“*Mineral Tax Act*” means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, as amended from time to time, and legislation in addition to or in substitution therefore which assesses a tax in favour of the Province similar to the tax presently assessed under the *Mineral Tax Act*;

“Nak’azdli Territory” is the territory over which Nak’azdli asserts Aboriginal rights and title and is shown on the map provided by Nak’azdli which is attached as Appendix 1;

“Operator” has the same meaning as in the *Mineral Tax Act*;

“Overpayment Amount” has the same meaning given to that term in section 3.1(c)(ii);

“Payment Statement” means the financial statement containing the tax information referred to in section 3.1(b) that British Columbia will provide to Nak’azdli under section 3.1(a);

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“Project” means, unless otherwise agreed in writing by the Parties:

1. the Mt. Milligan Mine project, which is located in the area depicted as “Mining Lease” on the map, attached as Appendix 2, and which is subject of the *Environmental Assessment Certificate* issued to Terrane Metals Corporation on March 16, 2009, located 40km from the Inzana Lake Reserve of Nak’azdli, and which includes its associated infrastructure, Access Roads, power facilities, and other physical facilities;
2. any changes, modifications or expansions to the mine and/or any of the elements described in paragraph (1) which are situated within the area depicted as “Mining Lease” on the map attached as Appendix 2;
3. all matters relating to the exploration, planning, permitting, construction, maintenance, repair, operation and reclamation of the Mt. Milligan Mine project and the elements described in paragraphs (1) and (2); and
4. modification of and changes to existing Access Roads and power lines located outside the area depicted as “Mining Lease” on the map attached as Appendix 2, to the extent required in connection with the elements described in paragraphs (1), (2) and (3);

but does not include, unless the parties agree otherwise, an extraordinary, unforeseen environmental emergency resulting from the mine that may have potentially significant adverse effect on Section 35 Rights;

“Proponent” means the Operator who from time to time is responsible for the Project and for paying *Mineral Tax Act* tax payments in relation to the Project to British Columbia;

“Provincial Agency” means British Columbia including:

1. any minister, public official, employee, person acting on behalf of, or as an agent of British Columbia; and
2. any government corporation;

“Section 35 Rights” means Nak’azdli’s asserted or determined Aboriginal rights which are or may be recognized and affirmed by section 35(1) of the *Constitution Act, 1982*, including any treaty rights which may accrue to Nak’azdli during the Term;

“Term” has the meaning given to that term in section 7.1; and

“Trust” means the trust established by Nak’azdli pursuant to section 3.2.

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Section 2 Purposes and Recognition and Respective Interests

2.1 Purposes

The purposes of this Agreement are to:

- a. confirm understandings reached between the Parties with respect to how British Columbia will meet its legal obligations to consult with Nak'azdli in relation to the Project; and
- b. share resource revenue received by British Columbia from the Project with Nak'azdli so that it may pursue activities that will enhance the social and economic well being of its Members.

2.2 Recognition

The Parties recognize and respect the following:

- a. The proposed mining site for the Project is located within Nak'azdli Territory over which Nak'azdli asserts Aboriginal rights and title; and
- b. Nak'azdli Members and their ancestors have used and continue to use the lands and resources within the Nak'azdli Territory in the vicinity of the Project.

2.3 Respective Interests

- a. British Columbia and Nak'azdli have undertaken a shared commitment to strengthening relationships and to focusing efforts to address Nak'azdli's socio-economic needs, which requires a relationship between Nak'azdli and British Columbia based on enhanced collaboration, effective working partnerships and mutual respect and accountability.
- b. British Columbia is committed to facilitating and developing a thriving, competitive, safe and environmentally responsible mineral resource sector, and for increasing contributions to the local and provincial economy for the benefit of all British Columbians.
- c. Nak'azdli is committed to ensuring the long term environmental protection of the Nak'azdli Territory while working with British Columbia to ensure that economic benefits from Nak'azdli Territory address Nak'azdli's socio-economic needs.
- d. British Columbia and Nak'azdli acknowledge how Nak'azdli's support of the Project through this agreement assists in the realization of contributions to the local economy for the benefit of Nak'azdli and other communities in the region.

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- e. The Parties agree that it is not the intention of either party to replace or diminish any financial or other benefits under any agreement between the Proponent and Nak'azdli with the financial benefits under this Agreement.

Section 3 Provincial Payments

3.1 Annual Payments

- a. British Columbia will within sixty (60) days after the end of a BC Fiscal Year, provide a Payment Statement to Nak'azdli for that BC Fiscal Year. The first Payment Statement will be provided following the first BC Fiscal Year in which British Columbia receives a tax payment from the Proponent under the *Mineral Tax Act* which will occur after the mine commences operation.
- b. The Payment Statement for a BC Fiscal Year will contain the following information in relation to the Proponent's tax liability, payments and refunds under the *Mineral Tax Act* relating to the Project:
 - i. the total amount of tax, penalty and interest assessed or reassessed during the BC Fiscal Year;
 - ii. the total amount of tax, penalty and interest paid by the Proponent during the BC Fiscal Year in relation to any previous or current Mine Fiscal Year other than a Mine Fiscal Year that ended before the Effective Date of the Agreement; and
 - iii. the total amount of tax and penalty refunded to the Proponent and interest paid to the Proponent during the BC Fiscal Year in relation to any Mine Fiscal Year other than a Mine Fiscal Year that ended before the Effective Date of the Agreement.
- c. Subject to compliance by Nak'azdli with the provisions of section 5.4,
 - i. if the amount in section 3.1(b)(ii) exceeds the amount in section 3.1(b)(iii), British Columbia will, subject to section 3.3, pay to the Trust twelve and one-half (12.5) percent of the difference between those two (2) amounts. British Columbia will make this payment within ninety (90) days after British Columbia has sent to Nak'azdli and the Trust the Payment Statement; and
 - ii. if the amount in section 3.1(b)(ii) is less than the amount in section 3.1(b)(iii), British Columbia will off-set twelve and

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one-half (12.5) percent of the difference between those two (2) amounts (the “Overpayment Amount”) against any subsequent payments British Columbia would otherwise have to make to the Trust under this Agreement in relation to any subsequent BC Fiscal Year.

- d. In the event that the Proponent is no longer responsible for making *Mineral Tax Act* payments in relation to the Project, such that there will be no subsequent payment to the Trust under this Agreement, British Columbia will send to Nak’azdli and the Trust a notice of any Overpayment Amount that remains outstanding, and British Columbia will deduct the Overpayment Amount from the Holdback.
- e. For the purposes of calculating the amount refunded to the Proponent pursuant to section 3.1(b)(iii), and irrespective of whether there continues to be a Mine Fiscal Year with respect to the Project, British Columbia will include any amounts that are refunded to the Proponent as a result of any reclamation tax credits attributable to the Project that are claimed at the end of the Project after the Proponent is no longer liable to pay any tax under the *Mineral Tax Act*.
- f. Nak’azdli understands that British Columbia may audit the Proponent from time to time to review the accuracy of *Mineral Tax Act* payments over a specific period of time, and also understands that the Proponent may appeal any assessment or reassessment of tax, penalty or interest to the minister responsible for administering the *Mineral Tax Act* and then to a court. Nak’azdli understands that any such audits or appeals may require an adjustment to the amount of the payments British Columbia will provide to the Trust in subsequent years, and may also affect the amounts that may be off-set pursuant to section 3.1(c)(ii).
- g. If British Columbia conducts an audit of the Proponent, British Columbia will report in writing to Nak’azdli and the Trust the results of the audit and specifically whether the Proponent had made overpayments, underpayments or correct payments under the *Mineral Tax Act* for the period of time subject to the audit. In the event of any appeal by the Proponent of any assessment or reassessment, British Columbia will report in writing to Nak’azdli and the Trust the results of the appeal.
- h. Notwithstanding whether there continues to be a Mine Fiscal Year with respect to the Project, British Columbia may either make a payment to the Trust, or off-set (or make a deduction from the Holdback, as the case may be) pursuant to section 3.1(c)(ii), based on the results of any subsequent audit of the Proponent or assessment or reassessment decision by the minister or a court.

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- i. During the Term, British Columbia will notify Nak'azdli of any significant changes made to the *Mineral Tax Act* tax regime and will be open to discussions with Nak'azdli respecting whether the nature of this Agreement should be reviewed as a result of those changes.
- j. Both parties acknowledge that *Mineral Tax Act* revenues fluctuate and any revenue-sharing payments from British Columbia will vary over time.

3.2 Delivery of Payments

- a. Nak'azdli will establish and maintain a Trust to receive Annual Payments, and will provide to British Columbia a legal opinion stating that:
 - i. the Trust is validly constituted according to the terms of this Agreement;
 - ii. the trustees of the Trust are legally capable of accepting rights granted and obligations imposed under this Agreement;
 - iii. the primary purpose of the Trust is to benefit the Members and to enable Nak'azdli to achieve the payment objectives set out in section 5.3(a); and
 - iv. the Trust may not be terminated, unless the Parties agree otherwise, as long as this Agreement is in effect or, if the Term has ended, as long as there is money in the Trust to be disbursed in accordance with its purposes.
- b. Nak'azdli will ensure that the Trust agreement establishing the Trust will have the payment objectives set out in section 5.3(a) as purposes of the Trust. Nak'azdli will provide to British Columbia name, address and account information respecting the Trust to enable British Columbia to make payments to the Trust.
- c. All payments which British Columbia is obliged to make pursuant to the Agreement are to be remitted to the Trust. For greater certainty, British Columbia will not be obligated to make any payments under this Agreement until Nak'azdli has complied with section 3.2(a) and (b) to the reasonable satisfaction of British Columbia.
- d. British Columbia will be entitled to rely on any notice of change of address or accounts set out in any Nak'azdli Band Council Resolution received by British Columbia.

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3.3 Holdback

Notwithstanding any provision of this Agreement, British Columbia will hold back five (5) percent of each payment made pursuant to section 3.1. The cumulative total of all amounts held back, along with interest thereon, is referred to herein as the Holdback. The Holdback will be governed by the following provisions:

- a. Interest will accrue on the Holdback, such interest to be calculated monthly at an interest rate equal to the rate paid to British Columbia by its principal banker and added to the Holdback;
- b. British Columbia will, within ninety (90) days of the end of the first BC Fiscal Year in which an amount has been held back pursuant to this section 3.3 and each BC Fiscal Year thereafter, provide to Nak'azdli a statement disclosing the balance of the Holdback and the interest credited to the Holdback during the BC Fiscal Year;
- c. British Columbia will be entitled to deduct from the Holdback any Overpayment Amount and will contemporaneously with the making of the deduction provide Nak'azdli with a revised statement disclosing the balance of the Holdback;
- d. British Columbia will pay the balance or a portion of the Holdback to the Trust within ninety (90) days of the date on which the Province, acting reasonably, determines that there is no possibility of any further refunds related to reclamation tax credits being made to the Proponent, or that the Proponent ceases to be eligible for any further refunds in relation to reclamation tax credits for the Project; and, if British Columbia determines that less than the full Holdback is required for a potential refund related to reclamation tax credits, British Columbia will pay to the Trust that portion of the Holdback not required for such purpose,
- e. For greater certainty the Province may access funds in the Holdback only in connection with the provisions of sections 3.1(d), 3.1(h) and 3.3(c).

3.4 Confidential Information

- a. Nak'azdli and the Trust will keep confidential information that British Columbia explicitly denotes as "Confidential", including the Payment Statements and any information that relates to tax payment information under the *Mineral Tax Act*, and will not disclose such information to any other person, unless compelled to do otherwise by law.

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- b. Notwithstanding section 3.4(a), Nak'azdli and the Trust, may disclose confidential information to their advisors, including legal, financial, tax and other professional advisors, provided that those advisors agree to keep the information confidential.
- c. Notwithstanding any other provision of this Agreement, British Columbia's obligation to provide information that is confidential under the *Mineral Tax Act* is subject to British Columbia obtaining written consent from the Proponent for sharing such information.
- d. Notwithstanding any other provision of this Agreement, Nak'azdli will have the right to disclose the amount of the Annual Payment to its Members each year.

3.5 Appropriation

Notwithstanding any other provision of this Agreement, the Annual Payments to be provided by British Columbia to Nak'azdli are subject to:

- a. there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when such payment is required, to make such payment; and
- b. Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such payment.

Section 4 Representations and Warranties

4.1 Nak'azdli Representations

Nak'azdli represents and warrants to British Columbia, on which British Columbia will rely in entering into this Agreement, the following:

- a. it has the legal authority, as represented by the Chief and Councillors of Nak'azdli, to enter into this Agreement on behalf of Nak'azdli and its Members and to make the covenants and representations in the Agreement, all of which have been duly authorized and executed by Nak'azdli;
- b. it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax and other professional advisors with respect to this Agreement; and
- c. that it enters into this Agreement for and on behalf of all of its Members and that this Agreement is binding upon Nak'azdli and its Members.

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4.2 Provincial Representations

British Columbia represents and warrants to Nak'azdli that it has the legal authority to enter into this Agreement and to carry out its obligations in accordance with the terms of this Agreement.

Section 5 Consultation, Acknowledgements and Covenants

5.1 Consultation and Accommodation Process on the Project

- a. With respect to any proposed Government Actions relating to the Project which may be taken after the Effective Date of the Agreement and which may impact Section 35 Rights, Provincial Agencies will consult with Nak'azdli, and Nak'azdli will participate as appropriate, in accordance with the Consultation and Accommodation Process, for the purposes of identifying potential mitigation or accommodation measures that may be appropriate for the Government Action (but any such measures will not include any direct financial payment other than those provided for in this Agreement, unless the parties agree otherwise).
- b. The Consultation and Accommodation Process is as follows:
 - i. Provincial Agencies will provide to Nak'azdli advance written notification of a proposed Government Action in relation to the Project that may adversely affect any of Nak'azdli's Section 35 Rights together with relevant information about the proposed activity;
 - ii. Provincial Agencies will provide a reasonable period of time for Nak'azdli to prepare its views on the proposed Government Action and will advise Nak'azdli of what period of time is viewed as reasonable at the time of the notification under subsection (i) and if Nak'azdli requests additional time, will, wherever feasible, provide additional time;
 - iii. Provincial Agencies will provide a reasonable opportunity for Nak'azdli to present its views as to potential adverse impacts on the exercise of any Section 35 Rights, together with any suggestions as to how any such impact may be avoided, mitigated, minimized or otherwise accommodated (other than by direct financial payment) and Provincial Agencies will provide a reasonable opportunity to discuss the views and attempt to resolve any concerns and, where appropriate, respond to their concerns;
 - iv. Provincial Agencies will undertake a full and fair consideration of any views presented by Nak'azdli;

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- v. In the absence of a presentation of views by Nak'azdli within a reasonable period of time, Provincial Agencies will allow Nak'azdli at least one (1) final opportunity to make a submission prior to making a full and fair consideration of all relevant information available respecting how to avoid, mitigate, minimize or otherwise accommodate (other than by direct financial payment) any potential adverse impacts on any of Section 35 Rights given that Provincial Agencies will have taken reasonable steps to inform themselves of any such adverse impacts of such Section 35 Rights;
- vi. Provincial Agencies will provide, in writing, to Nak'azdli timely notification of the decision taken, reasons for the decision with respect to Nak'azdli's interests, how the views presented by Nak'azdli were taken into account, and what measures, if necessary, were taken to avoid, mitigate, minimize, or otherwise accommodate any potential adverse impacts on any of Nak'azdli's Section 35 Rights.
- c. Nak'azdli agrees that by complying with the Consultation and Accommodation Process, Provincial Agencies will be deemed to have fulfilled any duty to consult with respect to a Government Action that may adversely affect Nak'azdli's Section 35 Rights.
- d. The Consultation and Accommodation Process is not intended to alter the process of consultation utilized by the Environmental Assessment Office in relation to any decision after the Effective Date of the Agreement pursuant to the *Environmental Assessment Act*.
- e. Within two (2) years of the Effective Date of the Agreement or such earlier time as the Parties may agree, either party may request that both parties review the adequacy of the Consultation and Accommodation Process and consider whether to amend section 5.1(b) in order to address the concerns of one or both parties.

5.2 Acknowledgements and Covenants

Nak'azdli, on its own behalf and on behalf of the Members, acknowledges and covenants that:

- a. Provincial Agencies have and will for all purposes be deemed to have fulfilled any legal obligations of consultation and accommodation in relation to the Project and all Government Actions carried out before the Effective Date of the Agreement;
- b. in relation to Government Actions which arise after the Effective Date of the Agreement, Provincial Agencies will be deemed to have fulfilled any and all legal obligations of consultation by complying with the Consultation and Accommodation Process (or, in the case

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of decisions made under the *Environmental Assessment Act*, with the process of consultation utilized by the Environmental Assessment Office); and

- c. this Agreement resolves any and all past or future economic and financial demands or claims against Provincial Agencies in relation to all Government Actions with respect to the Project, including but not limited to claims related to issues of capacity funding, revenue generation, revenue-sharing and economic benefits, third-party studies or payments, or other compensation or disbursements of any kind.

5.3 Payment Objectives

- a. Nak'azdli covenants that it will use the Annual Payments provided under this Agreement for socio-economic objectives on behalf of the Members, including but not limited to objectives for education, culture, housing, infrastructure, health, economic development and governance capacity, as Nak'azdli determines appropriate over time. For clarity, Nak'azdli may use all, or a portion of, Annual Payments received in any given year for priority objectives in that year, or may hold such payments for implementing socio-economic objectives in future years.
- b. Whether or not the Term has ended, Nak'azdli covenants that it will continue to use the monies received under this Agreement for the objectives set out in section 5.3(a) even if the Trust is terminated.

5.4 Reports

- a. Within two (2) years of the Effective Date of this Agreement, Nak'azdli will prepare a Statement of Community Priorities that identifies community priorities and outlines goals and specific outcomes that Nak'azdli intends to fund to help to achieve the objectives set out in section 5.3(a) over the next three (3) years.
- b. Within ninety (90) days of receipt of an Annual Payment under this Agreement, and subject to section 5.4(c), Nak'azdli will provide to British Columbia and its Members a report that describes how the payments received under this Agreement were used during the previous year and how they have helped Nak'azdli achieve the Statement of Community Priorities referred to in section 5.4(a).
- c. The Statement of Community Priorities referred to in section 5.4(a) and the report pursuant to section 5.4(b) will be published by Nak'azdli on the web or in an equivalent manner that can reasonably be expected to bring the Statement of Community Priorities and report to the attention of its Members and British Columbia.

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- d. Nak'azdli will continue to provide to British Columbia the documents referred to in section 5.4(b) for an additional twelve (12) months after Nak'azdli receives the last Annual Payment from British Columbia, of which British Columbia will notify Nak'azdli in writing.
- e. British Columbia will have the right, from time to time, at its sole discretion, to require and to review an audit of the Trust to ensure that all expenditures were made for appropriate purposes under this Agreement.

5.5 Release

Nak'azdli, on its own behalf and on behalf of the Members, hereby releases and forever discharges British Columbia, including each Provincial Agency, from all actions, causes of action, claims, proceedings, debts, duties, demands, interest, fines, costs, expenses and compensation of whatsoever amount and kind in respect of the Project which existed as of the Effective Date of the Agreement.

5.6 No Proceedings

Nak'azdli covenants and agrees, on its own behalf and on behalf of the Members, that:

- a. it will not bring or continue any action or other proceeding, at law or in equity, in its own name or by representative action, against British Columbia in regard to the subject matter of the release in section 5.5; and
- b. it will not challenge or impede the right of British Columbia or the Proponent, or any of their respective employees, contractors, agents, representatives or invitees, to gain access to the Project (which, for greater certainty, includes the load-out facilities associated with the Project whether located at Fort St. James as planned, Mackenzie or Stewart) and to carry out any activities associated with the development and operations of the Project.

5.7 Assistance

Nak'azdli will promptly, upon request by British Columbia, cooperate with British Columbia and provide its support to British Columbia in contesting or otherwise seeking to resolve any action that might be taken by any Member that is inconsistent with sections 3.4, 5.5 or 5.6.

5.8 Continuing Obligations

The Parties acknowledge and agree that they intend this Agreement to benefit and bind British Columbia and Nak'azdli, including present and future Members and Chiefs and Councils of Nak'azdli, on an ongoing basis and accordingly the acknowledgements, releases and covenants given by Nak'azdli

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in sections 5.2 through 5.6 are intended to remain fully binding and enforceable with respect to Government Actions which occurred prior to the Effective Date or during the term of this Agreement, despite the end of the Term and despite any matter whatsoever including any determination by a court or a tribunal of competent jurisdiction, or any other recognition, of any Section 35 Rights held by Nak'azdli.

5.9 Payment Disputes

If there is a dispute as to the proper amount of payment then either Party may give the other notice of the same and upon the giving of such notice the Parties will diligently seek to resolve that dispute. Until any such dispute is finally resolved by agreement or the final decision of a court or arbitrator, and the expiration of any applicable appeal periods, British Columbia will be deemed to be in compliance with its obligation to make payments under section 3.1.

5.10 Termination of Litigation

Nak'azdli will, within thirty (30) days of the Effective Date of the Agreement, fully and finally terminate all litigation related to the Project including each of the following matters by filing a consent dismissal order (or its equivalent) with the Court or Tribunal Registry:

- a. *Fred Sam on his own behalf and on behalf of the Nak'azdli First Nation, the Nak'azdli Band, and all the members of the Nak'azdli First Nation and the Nak'azdli Band v. Her Majesty the Queen in Right of Canada, as represented by the Minister of Industry, Industry Canada and the Attorney General of Canada, Federal Court File No. T-2028-10;*
- b. *Fred Sam on his own behalf and on behalf of all the members of the Nak'azdli First Nation and the Nak'azdli First Nation v. Her Majesty the Queen in right of Canada, as represented by the Minister of Fisheries and Oceans and the Minister of Natural Resources Canada, the Canadian Environmental Assessment Agency, the Attorney General of Canada, and Terrane Metals Corporation, Federal Court File No. T-23-10; and*
- c. *Fred Sam on his own behalf and on behalf of all the members of the Nak'azdli First Nation and the Nak'azdli First Nation v. Director, Environmental Management Act (June 15, 2010 Permit PE104777 issued to Terrane Metals Corp.), Appeal File 2010-EMA-009;*

and will, prior to the end of said thirty (30) day period, provide British Columbia with sufficient particulars to enable British Columbia to determine that the matters have been fully and finally terminated.

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Section 6 Assignment

- 6.1** Nak'azdli will not assign, either directly or indirectly, this Agreement or any right of Nak'azdli under this Agreement without the prior written consent of British Columbia.

Section 7 Term

- 7.1** The term of this Agreement (the "Term") will commence on the Effective Date of the Agreement and will continue for as long as tax, interest and penalties payable by the Proponent are subject to reassessment under applicable legislation, unless this Agreement:
- a. terminates or is extended by mutual agreement of the Parties;
 - b. terminates at the end of the ninety (90) day period referred to in section 8.1;
 - c. terminates in accordance with section 8.6 or is terminated by British Columbia in accordance with section 8.7.
- 7.2** The Parties' rights and obligations which by their nature extend beyond the expiration or termination of the Agreement will survive the expiration or termination of the Agreement.

Section 8 Termination

- 8.1** Either Party may terminate this Agreement prior to the end of the Term on the grounds set out in sections 8.2 or 8.3 by giving the other Party ninety (90) days advance written notice of the intent to terminate the Agreement and the reasons for terminating the Agreement. During the ninety (90) day period, representatives of the Parties will meet in order to discuss the circumstances which gave rise to the written notice and in order to determine whether there is a basis for rescinding the notice.
- 8.2** Nak'azdli will have the right to terminate this Agreement in accordance with section 8.1 if:
- a. British Columbia fails to make a payment to Nak'azdli as contemplated by section 3, other than a failure to pay as a result of a dispute concerning the proper amount of payment; or
 - b. British Columbia does not make an annual payment as a result of the provisions of section 3.5;
 - c. the representation or warranty made by British Columbia in this Agreement is untrue or incorrect; or

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- d. British Columbia is not in compliance with its obligations under this Agreement.

8.3 British Columbia will have the right to terminate this Agreement in accordance with section 8.1 if:

- a. Nak'azdli is not in compliance with its obligations under this Agreement;
- b. any representation or warranty made by Nak'azdli in this Agreement is untrue or incorrect;
- c. changes are made to the Trust that, in the opinion of British Columbia, are inconsistent with the terms of the legal opinion referred to in section 3.2, or the trust is terminated; or
- d. Nak'azdli (in its own name or in the name of its Chief acting on behalf of Nak'azdli or its Members) commences any legal proceeding against British Columbia, or activates a proceeding in abeyance, in relation to the Project or this Agreement, other than a legal proceeding based on a claim that British Columbia has failed to make any payment due under this Agreement.

8.4 If the Term ends otherwise than on the last day of a Mine Fiscal Year:

- a. no payment will be payable to the Trust under this Agreement in relation to that portion of the Mine Fiscal Year after the date on which the Term ends or in relation to any subsequent Mine Fiscal Year; and
- b. subject to section 8.4(a) above, the obligations of British Columbia set out in sections 3.1(a) through (h) will continue, but only to the extent that tax, penalty or interest is assessed or reassessed, or amounts are received from, or refunded or paid to, the Proponent by British Columbia in relation to Mine Fiscal Years ending between the Effective Date of the Agreement and the date the Term ends.

8.5 The Holdback, if any, will, after the end of the Term, continue to be governed by the provisions of section 3.3.

8.6 This Agreement will terminate, without liability or penalty attaching to either Party, if the obligations set out in section 5.10 have not been satisfied by Nak'azdli within the time specified.

8.7 Notwithstanding any other provision of this Agreement, British Columbia will, at any time following the date which is eighteen (18) months after the Effective Date of the Agreement, have the right, exercisable in its sole discretion, to terminate this Agreement, if

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- a. British Columbia and Nak'azdli have not negotiated and executed a mutually acceptable comprehensive consultation protocol applicable to all prospective Crown and Crown-authorized activities affecting Nak'azdli Territory which trigger the duty to consult with Nak'azdli, including activities which relate to the Project; or
- b. the comprehensive consultation protocol referred to in this section 8.7 terminates during the Term.

8.8 For clarity, the Parties may, in the manner described in section 11.27, agree to amend the eighteen (18) month period referred to in section 8.7.

Section 9 Dispute Resolution

- 9.1** A "Dispute" is defined, for the purposes of this section, as any disagreement:
- a. about which written notice of a dispute is given in accordance with sections 9.4 and 10.1; and
 - b. which relates to the interpretation of this Agreement.
- 9.2** "Mediation" is defined, for the purposes of this section 9, as a structured negotiation assisted by a neutral mediator who has skill and experience in mediation and who has no authority to impose a solution on the Parties.
- 9.3** No part of this section 9 applies in respect of a Government Action which potentially adversely affects or infringes an Aboriginal right or in respect of the exercise by British Columbia of its right to terminate this Agreement pursuant to section 8.7.
- 9.4** Any Party may give written notice of a Dispute to the other Party, which must include a summary of the particulars of the dispute.
- 9.5** Within ten (10) working days, the Parties will meet and will attempt to resolve the Dispute through unassisted collaborative negotiation.
- 9.6** The Parties may agree to vary a procedural requirement contained in this section 9 as it applies to a particular Dispute.
- 9.7** No Party may commence a court proceeding concerning a Dispute without first proceeding to mediation as provided for in section 9.8, except:

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- a. to prevent the loss of a right of action due to the expiration of a limitation period;
- b. to obtain interlocutory or interim relief; or
- c. if the matter is considered by the Party to be of an urgent nature.

9.8 If the Parties are unable to resolve a Dispute through informal collaborative negotiations and a Party wishes to invoke this section 9.8, that Party will deliver a written notice (“Notice to Mediate”) to the other Party, requiring commencement of mediation. The following will apply to mediation pursuant to this section 9:

- a. Upon receiving a Notice to Mediate, a Party directly engaged in a Dispute will participate in the mediation.
- b. The mediation will be conducted by one mediator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after delivery of the Notice to Mediate, the mediator will be appointed by the British Columbia Mediator Roster Society using the Society’s mediation rules.
- c. The mediation will be conducted in the manner that the mediator considers necessary and appropriate to assist the Parties to resolve the Dispute in a fair, efficient and cost-effective manner.
- d. The mediation is terminated at the earliest of:
 - i. the expiration of thirty (30) days after the appointment of the mediator or any longer period agreed to by the Parties;
 - ii. the withdrawal from the mediation of a Party by notice in writing to the mediator, provided that no such Party may withdraw until after the first meeting with the mediator;
 - iii. the date on which the Parties agree in writing to terminate the mediation; or
 - iv. the date on which the Parties sign a written agreement resolving the Dispute.
- e. The Parties will:
 - i. on request of the other Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated, with the exception of privileged documents and subject to applicable information and privacy legislation and other laws imposing confidentiality requirements;

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- ii. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
- iii. negotiate in good faith.
- f. The mediation process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.
- g. A Party may withdraw from mediation at any time by providing written notice of its intent to the mediator.
- h. The mediation will not restrict in any way the positions that each of the Parties may take in any dispute, arbitration or court proceeding.
- i. The mediator will not issue a report or make any recommendations unless requested to do so in writing by the Parties.
- j. Any agreement reached through mediation will be recorded in writing, signed by authorized representatives of the Parties and delivered to the Parties.
- k. The Parties will each bear the costs of their own participation, representation and appointments in the mediation. The Parties will share equally all common costs of the mediation, including fees of the mediator, costs of meeting rooms, actual and reasonable disbursements incurred by the mediator, and fees of the British Columbia Mediator Roster Society.

9.9 If the Parties are unable to resolve a Dispute through mediation in accordance with section 9.8, and after termination of the mediation under section 9.8(d), then, with the written agreement (the “Arbitration Agreement”) of the Parties, the dispute will be referred to and resolved by arbitration. The following will apply to an arbitration pursuant to this section 9.9.

- a. Unless the Parties otherwise agree, the arbitration will be conducted by an arbitrator appointed by agreement of the Parties. If there is no such agreement within thirty (30) days after the date of signing of the Arbitration Agreement, the arbitrator will be appointed by the British Columbia International Commercial Arbitration Centre, or if the Centre is unavailable, any other independent and impartial body or individual acceptable to the Parties.
- b. The arbitration process and all its related proceedings will be and will remain confidential, unless the Parties agree otherwise.

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- c. Subject to the exceptions in applicable arbitration legislation, the decision of the arbitrator is final and binding on the Parties for the term of this Agreement.
- d. Except as otherwise ordered by the arbitrator,
 - i. the Parties will each bear the costs of their own participation, representation and appointments in the arbitration; and
 - ii. the Parties will share equally all common costs of the arbitration, including fees of the arbitrator, costs of hearing and meeting rooms, actual and reasonable disbursements incurred by the arbitrator, and administration fees of the British Columbia Commercial Arbitration Centre or other appointing authority.

9.10 The Parties may also choose other appropriate approaches to assist in reaching resolution of the Dispute.

9.11 Nothing in this section 9 creates a cause of action where none otherwise exists.

Section 10 Notice and Delivery

10.1 Where in this Agreement any notice or other communication is required to be given by any of the Parties, it will be made in writing. It will be effectively given:

- a. by personal delivery to the address of the Party set out below, on the date of delivery;
- b. by pre-paid registered mail to the address of the Party mentioned in this Agreement, on the date the registered mail is delivered; or
- c. by facsimile, to the facsimile number of the Party set out in this Agreement, on the date the facsimile is received.

10.2 The address and facsimile numbers of the Parties are:

- a. Nak'azdli:

Nak'azdli First Nation
PO Box 1329, 284 Kwah Road
Fort St. James, BC V0J 1P0
Fax: (250) 996-8010
Attention: Chief and Council

- b. British Columbia:

Ministry of Aboriginal Relations and Reconciliation

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2957 Jutland Road
Victoria, BC V8T 5J9
Fax: (250) 387-6073
Attention: Assistant Deputy Minister, Strategic Initiatives Division

- 10.3** Any Party may at any time give notice to the other Party of any change of address or facsimile number in accordance with section 10.1.

Section 11 General Provisions

- 11.1** Nothing in this Agreement prohibits Nak'azdli from participating in government programs for which it may be eligible.
- 11.2** No payment under this Agreement will be relied upon to deduct any payment which Nak'azdli could otherwise receive under a treaty, an interim treaty measure, Forest and Range Agreement (howsoever named) or any other payment that may otherwise be made to Nak'azdli.
- 11.3** The Parties agree that it is not intended that funds received under this Agreement by Nak'azdli are intended to be "Own Source Revenue" for the purposes of Treaty.
- 11.4** This Agreement does not constitute a section 35 or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 11.5** Except as expressly contemplated herein, this Agreement does not create, expand, amend, define, affirm, recognize, limit, deny, abrogate, extinguish, replace or derogate from any Section 35 Rights.
- 11.6** The Agreement shall not be interpreted as addressing compensation for alleged past or future infringements of Section 35 Rights that are not related to the Project.
- 11.7** This Agreement does not change or affect the position either Party has, or may have, regarding its jurisdiction, responsibilities and decision-making authority, and it should not be interpreted in a manner that would affect or unlawfully interfere with any legislative authority of British Columbia or any lawful authority of Nak'azdli.
- 11.8** No partnership, joint venture, agency, fiduciary or employment relationship will be deemed to be created by this Agreement or by any actions of the Parties under this Agreement.
- 11.9** Except as contemplated herein, this Agreement does not limit the position either Party may take in any legal or administrative proceedings or in any discussions or negotiations between the Parties.

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- 11.10** Nothing in this Agreement is to be construed as an acceptance of or admission by a Party of the position of the other Party or as an admission of liability.
- 11.11** This Agreement does not constitute an admission that the Project, including any Government Action associated with the Project, has resulted or will result in any unjustified infringement of any Section 35 Rights.
- 11.12** This Agreement does not constitute any admission of an obligation to provide financial or economic benefits, as provided in this Agreement, as part of British Columbia's obligation to consult and accommodate in relation to the Project.
- 11.13** This Agreement is to be governed by the applicable laws of Canada and British Columbia.
- 11.14** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 11.15** This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 11.16** If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.
- 11.17** If any part of this Agreement is void or unenforceable at law, the Parties agree to negotiate and attempt to reach agreement, to the extent reasonably possible and as their respective interests may require, on a replacement for the severed part with a view to achieving the intent of the Parties as expressed in this Agreement. The Parties may agree to refer the matter to the dispute resolution process set out in section 9.
- 11.18** All headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, limit, enlarge, modify or explain the scope, extent or intent of this Agreement or any of its provisions.
- 11.19** In this Agreement, words in the singular include the plural, and words in the plural include the singular unless the context or any specific definition otherwise requires.
- 11.20** The use of the word "including" is to be read as not limiting the generality of the preceding term or phrase.

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- 11.21** In this Agreement, any reference made to a statute includes all regulations made under that statute and any amendments or replacements.
- 11.22** No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Parties unless such waiver is expressed in writing by the Parties.
- 11.23** All references in this Agreement to a designated section or other subdivision or to an appendix are to the designated section or other subdivision of, or appendix to, this Agreement.
- 11.24** Any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity.
- 11.25** The following appendices are attached to and form part of this Agreement:
- Appendix 1: Map of Nak'azdli Territory
- Appendix 2: Map of the mining lease area, exclusive of Access Roads and power facilities
- 11.26** This Agreement may be executed in counterparts and by facsimile by the Parties.
- 11.27** Any amendment of this Agreement agreed to by the Parties must be in writing and signed by the Parties.

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**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**, as represented
by the Minister of Aboriginal Relations
and Reconciliation

Honourable Minister Mary Polak

Witness

NAK'AZDLI FIRST NATION
as represented by the Chief and
Council of Nak'azdli First Nation

Chief Fred Sam
Nak'azdli First Nation

Witness

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APPENDIX 2

Map showing Mining Lease Area

