

# TKN KEMESS UNDERGROUND COLLABORATION PLAN

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## **BACKGROUND:**

AuRico Metals Inc. (AuRico) is pursuing provincial and federal environmental assessment (EA) certification of an underground gold-copper mine located 250 kilometers (km) north of Smithers and 6.5 km north of the past producing Kemess South mine - the proposed Kemess Underground Project (KUG Project). All components and activities within the scope of the EA for the KUG Project (as defined by the Section 11 Order for the KUG Project) are within the traditional territories of Takla Lake First Nation (TLFN) and Tsay Keh Dene Nation (TKD), and immediately upstream of Kwadacha Nation (KN) territory (collectively, the “Tse Keh Nay”, “TKN” or the “First Nations”). The KUG Project has the potential to cause serious adverse impacts within TKN territories.

There is a long history of the TKN communities working collectively in relation to the KUG Project. The TKN communities will continue to do so in the EA of the KUG Project by participating in each of the collaborative steps outlined in this Plan together and speaking with one voice.

In addition to collaborating with the Environmental Assessment Office (EAO) pursuant to this TKN Kemess Underground Collaboration Plan (Plan), TKN is also working collaboratively with AuRico in relation to the EA of the KUG Project under the Interim Measures Agreement and Environmental Assessment Conduct Agreement.

## **COLLABORATIVE CONTEXT:**

British Columbia (BC) and the Carrier Sekani First Nations (CSFNs) signed a Collaboration Agreement in April 2015 (Collaboration Agreement). TLFN is a signatory to the Collaboration Agreement, which provides a framework for BC and the CSFNs to engage in collaborative decision-making for major projects. Key aspects of that framework include seeking (i) to develop consensus recommendations in relation to the design and implementation of EAs and regulatory review processes in relation to major approvals, and (ii) consensus in relation to decisions on major approvals.

The EAO and TLFN have agreed to treat the KUG Project as a major project within the meaning of that term in the Collaboration Agreement. They also recognize that (i) the EA of the KUG Project was initiated before the Collaboration Agreement came into force, and (ii) BC and the CSFNs have not yet determined how the collaborative decision-making framework will be applied to major projects.

TKN and the EAO (collectively, the “Parties”) recognize that there are established relationships and agreements among TLFN, KN and TKD, as well as between TKN and AuRico that are unique to this KUG Project and potentially enhance collaboration opportunities. The Parties recognize the importance of TLFN maintaining its relationships and commitments related to TKN and with AuRico.

The EAO has therefore agreed to extend and apply the commitments in the Collaboration Agreement to TKN as a collective for the purpose of the KUG Project.

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Accordingly, the Parties have created this Plan to facilitate their collaboration on recommendations related to the EA process and EA decisions for the KUG Project to ensure that it is done within the spirit and intent of the Collaboration Agreement, including addressing the potential adverse impacts of the KUG Project on any TLFN, TDK, or KN Aboriginal title, rights and interests within their respective territories. The Plan is unique and specific to the KUG Project.

## PRINCIPLES

- In the interest of avoiding conflict, producing durable outcomes, and facilitating mutual economic development objectives, the Parties are committed to seeking consensus in relation to decisions in the EA of the KUG Project.
- Collaboration can facilitate BC discharging its constitutional duty to consult with and accommodate the First Nations. However, the focus of collaboration will be working together on a government-to-government basis.
- The collaborative process for the KUG Project will be informed by its unique circumstances – i.e. that this EA started before the Collaboration Agreement came into force and the nature of potential KUG Project impacts on the Aboriginal title, rights and interests of the First Nations within their respective territories.
- Collaboration on the KUG Project requires a predictable, practical, and timely process that appropriately addresses the Parties' interests.
- The Parties agree that third party interests, the sufficiency of information, administrative fairness obligations and constitutional obligations to the First Nations inform the collaborative process set out in this Plan.
- The Parties will avoid taking positions and will attempt to resolve issues in an interest-based manner.
- The Parties will, within the context of their respective mandates and authorities, continue to require AuRico to support TKN's meaningful participation in the EA process.
- The Parties will treat the Plan as a living document. They may incorporate new collaboration ideas into the Plan if and as they arise and are agreed to by the Parties. Ideas may also inform EA reform discussions contemplated by the Collaboration Agreement.
- The TKN communities have agreed to work collectively for the purposes of completing technical work necessary to engage in the EA process for the KUG Project and this Plan. However, each TKN community will make its own decisions in relation to the KUG Project.
- The Parties agree to be guided by the Principles described in Section 2 of the Collaboration Agreement and Section 3.1 of the Environmental and Socio-Cultural Initiatives Agreement.

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## **OBJECTIVES OF THE KEMESS UNDERGROUND COLLABORATION PLAN:**

This Plan provides the framework for the Parties to work collaboratively in seeking consensus in relation to EA decisions for the KUG Project. The Parties recognize that different levels of collaboration may be required for the various decisions that BC will make in relation to the EA of the KUG Project. The Plan is intended to guide the Parties' work to identify the mechanisms, measures, and activities through which they will facilitate the collaborative outcomes envisioned throughout the EA process for the KUG Project.

Progress and collaborative measures to be pursued and to be considered are captured under the following two headings:

- 1) Kemess Underground Collaboration Plan Development
- 2) Collaborative Activities and Mechanisms

## **COLLABORATION STEPS:**

### 1) Kemess Underground Collaboration Plan Development

The Parties have established a Kemess Underground Collaboration Team to develop and implement this Plan. The team will consist of representatives of TLFN, TKD, KN, Major Mines Permitting Office (MMPO) and the EAO.

### 2) Collaborative Activities and Mechanisms

- a) Prior to finalizing the AIR, the EAO and TLFN met to review and identify any TLFN specific outstanding issues.
- b) TKN and the EAO discussed whether AuRico's Application satisfied the requirements of the Section 11 Order and the AIR.
- c) During Application Review, the Parties:
  - i. held meetings in each TKN community, if requested by a TKN First Nation;
  - ii. and where necessary, AuRico, will meet to review the Plan, implications for Application Review, and opportunities going forward;
  - iii. will meet with the Ministry of Energy and Mines, Ministry of Environment, Ministry of Forests, Lands and Natural Resource Operations, Ministry of Aboriginal Relations and Reconciliation and MMPO to consider broader collaboration required on the KUG Project, including permitting;

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- iv. will continue to work towards identifying other information requirements that are important for completing the assessment of the Application;
- v. where additional information identified in (iv) is not available in a time frame to allow it to be adequately considered during Application Review, the Parties will work towards developing consensus recommendations on requests for timeline extensions or suspensions, or consensus recommendations for alternative approaches to address the limits to information or analysis;
- vi. will discuss how they may collaborate during the Application Review period to assess and consider the KUG Project's potential impacts to the Aboriginal title, rights and interests of the First Nations within their respective territories, including by:
  - (1) reviewing existing EAO methodology to consider impacts to the Aboriginal title, rights and interests of the First Nations within their respective territories and discussing opportunities to enhance or modify that methodology as reflected in Appendix B; and
  - (2) receiving and considering a report from TKN assessing the impacts of the KUG Project on the Aboriginal title, rights and interests of the First Nations within their respective territories;
- vii. and where necessary, AuRico, will discuss the potential for the KUG Project to impact the Aboriginal title, rights and interests of the First Nations within their respective territories and how those effects will be avoided, and where that is not possible, mitigated or accommodated;
- viii. will collaboratively draft Part C – Effects to the Aboriginal title, rights and interests of the First Nations within their respective territories –of the EAO's Kemess Assessment Report (the “**Assessment Report**”);
- ix. will collaboratively draft and work towards consensus on proposed EA Certificate conditions (should one be issued) related to the Aboriginal title, rights and interests of the First Nations within their respective territories, including ongoing roles for TKN in monitoring should the KUG Project proceed. Subject to agreement, the Parties will include key working group members and government agencies as appropriate and available to support their discussions; and
- x. will work towards developing consensus conclusions in the Assessment Report on:

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- (1) KUG Project-related impacts to the Aboriginal title, rights and interests of the First Nations within their respective territories; and
  - (2) the adequacy of consultation with and accommodation of the First Nations.
- d) Where the Parties are unable to reach consensus on issues relating to paragraphs (viii)-(x), they will implement the issue resolution process set out in Appendix A.
- e) The Parties will seek to develop consensus recommendations to the Ministers in relation to their decision under s. 17(3)(c) of the *Environmental Assessment Act* (Act). As part of that process, TKN representatives, the EAO's KUG Project Assessment Lead, and the EAO Executive Director (ED) will meet, no later than 10 days before the anticipated date that the assessment decision package will be referred to the Ministers. The Parties may bring other representatives from their respective organizations to attend the meeting, as needed. The Parties have differing views of the scope of the consensus recommendations:
- i. The EAO is of the view that the Parties should seek to develop consensus recommendation in relation to the Aboriginal title, rights and interests of the First Nations within their respective territories.
  - ii. TKN is of the view that the consensus recommendations should not be limited to Aboriginal title, rights and interests, but that the Parties should seek to develop consensus on all of the recommendations related to the KUG Project.

The Parties acknowledge that the ED's recommendations will also need to consider the KUG Project more broadly than only KUG Project impacts on the Aboriginal title, rights and interests of the First Nations within their respective territories, including the extent to which the KUG Project is likely to cause significant adverse environmental effects, the adequacy of consultation and accommodation in relation to other First Nations, and other matters in the public interest.

The Parties also acknowledge that the ED must consider matters of procedural fairness and will need to share the discussion with TKN with AuRico or other parties where matters discussed may materially impact AuRico's or other parties' interest(s) or where matters agreed are contradictory to what is in the Assessment Report. As well, the Parties agree that discussions may not be shared publicly until the Ministers' decision is announced, at which time documentation of the discussion will form a part of the public record.

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- f) If the Parties are unable to develop consensus recommendations to the Ministers or if the Parties otherwise agree, then:
  - i. TKN is of the view that a meeting between TKN leadership and Ministers is an opportunity to provide the Parties with a further opportunity to resolve outstanding issues, and to ensure the Ministers have a full understanding of the difference of views and implications to the Aboriginal title, rights and interests of the First Nations within their respective territories before they make a decision under s. 17(3)(c) of the Act; and
  - ii. The EAO views a meeting between TKN leadership and Ministers as procedurally challenging and is unable to make this commitment in this Plan.
- g) TKN will be afforded an opportunity to provide a separate submission to Ministers.
- h) The Parties will continue to discuss opportunities for Collaboration in relation to the EA of the KUG Project.

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## Appendix A - Issue Resolution Process

### SECTION 1– SEEKING CONSENSUS

- 1.1 **Consensus.** The Parties will seek to reach consensus on the issues identified in paragraphs 2(viii) – (x) of the Collaboration Plan.

### SECTION 2– ISSUE RESOLUTION PROCESS

- 2.1 **Issue Resolution Process.** Where the Parties are unable to reach consensus under section 1.1, either Party may trigger the following process (the “**Issue Resolution Process**”) not less than 30 days prior to the anticipated referral date to attempt to resolve the outstanding issue(s).
- 2.2 **Notice.** Either Party may initiate the Issue Resolution Process by providing written notice (the “**Notice**”) to the Issue Resolution Group that includes:
- i. a description of the outstanding issue,
  - ii. any applicable Aboriginal title, rights and interests, and
  - iii. potential measures to resolve the issue in a manner that addresses the applicable interests.
- 2.3 **Issue Resolution Group.** The Issue Resolution Group will consist of the TKN Chiefs, the TKN representatives on the Kemess Underground Collaboration Team, the Assistant Deputy Minister, Environmental Assessment Operations and the EAO Project Assessment Lead (the “**Issue Resolution Group**”). The Parties may bring other representatives from their respective organizations to attend the meeting of the Issues Resolution Group, as needed.
- 2.4 **Meeting of the Issue Resolution Group.** Unless one or more of the suggested solutions provided in the Notice is agreeable to each applicable Party, the Issue Resolution Group will meet and attempt to resolve the outstanding issue(s) within 10 days of receiving the Notice under section 2.2 (not less than 20 days prior to the anticipated referral date).
- 2.5 **End of Issue Resolution Process.** Where the Issue Resolution Group is unable to resolve the issue within 10 days of receiving the Notice, each Party may proceed with its decision-making process.

### SECTION 3- ASSESSMENT REPORT

- 3.1 **Assessment Report.** Where the Parties reach consensus under section 1.1, this will be recorded in Part C of the Assessment Report.
- 3.2 **Issue Resolution Results.** Where the Issue Resolution Process is triggered, the results of the Issue Resolution Process, any consensus views and any non-consensus views of either

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Party, will be recorded in a report (Issues Resolution Report), and its content incorporated into the Assessment Report.

- 3.3 **Separate Submissions.** Nothing in this Issue Resolution Process precludes TKN from making a separate submission to Ministers, to be received by the EAO not less than 10 days prior to the anticipated referral date. TKN may request an additional 5 days to prepare their separate submission to Ministers, and the EAO will not unreasonably deny this request.

## SECTION 4 – PROPONENT PARTICIPATION

- 4.1 **Proponent Participation.** The Parties may agree to invite AuRico to participate in the Issue Resolution Process.
- 4.2 **Information Sharing.** The Parties acknowledge that any of the following may be provided to AuRico at the relevant stage in the Issue Resolution Process, where it may materially impact the Proponent's interest(s):
- i. the Assessment Report;
  - ii. the Notice under section 2.2;
  - iii. proposed solutions suggested for the Issues Resolution Report to resolve the outstanding issue(s);
  - iv. the Issues Resolution Report; and
  - v. any separate submissions.

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## Appendix B – Conceptual Factors Relating to Aboriginal Title, Rights and Interests of the First Nations

