

DRAFT APRIL 9, 2013

EXPLORATION MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) made this day of 2013
BETWEEN:

Temagami First Nation, represented herein by the Council of Temagami First Nation pursuant to the *Indian Act* (Canada) and has its Band administration office on Bear Island, Ontario (“**TFN**”)

OF THE FIRST PARTY

- and -

Teme-Augama Anishnabai, an Aboriginal Nation existing and inhabiting n’Daki Menan in the Province of Ontario (“**TAA**”)

OF THE SECOND PARTY

- and -

Exploration Company [confirm legal name], a corporation incorporated under the laws of _____, Canada and having a head office at [NTD: insert address] (hereinafter referred to as [“**Exploration Co.**”])

OF THE THIRD PARTY

WHEREAS:

- A. TFN/TAA have a sacred and inalienable relationship with n’Daki Menan. TFN/TAA have a shared interest to protect the integrity of n’Daki Menan and ensuring sustainable development within n’Daki Menan. (See Appendix A - Map of n’Daki Menan).
- B. N’Daki Menan (“Our Land”) is the traditional lands and waterways occupied and used for thousands of years, and currently used by Temagami First Nation/Teme-Augama Anishnabai.
- C. The Supreme Court of Canada recognised that n’Daki Menan was and is the traditional territory of TAA, and that the Crown has failed to comply with its fiduciary obligations to TFN/TAA (*Ontario v. Bear Island Foundation* [1991] 2 SCR 570. TFN/TAA has a strong case of inherent Aboriginal title and rights over n’Daki Menan, of which the Crown has knowledge. These matters currently are the subject of negotiations between the Crown and TFN/TAA.
- D. In an Indenture of Accord dated September 7, 1978 the surrounding First Nations recognised n’Daki Menan to be the ancestral lands of the TFN/TAA.
- E. The *United Nations Declaration on the Rights of Indigenous Peoples* provides that indigenous peoples have the right to own, use, develop and control lands that they

possess by reason of traditional ownership, or other traditional occupation or use, and the right to maintain and strengthen their distinctive spiritual relationship with, and to uphold their responsibilities to future generations in regard to, these lands (Articles 25 and 26).

- F. TFN/TAA have constitutionally protected Aboriginal and Treaty rights and the Crown and any third party (Proponent) must engage TFN/TAA when proposing any mining activity on n'Daki Menan to determine any adverse impact upon any of TFN or TAA's Aboriginal or Treaty rights, and to accommodate those rights through mutually acceptable negotiations.
- G. TFN/TAA and **[Exploration Co.]** are entering into this Exploration MOU ("MOU") to promote a cooperative and mutually respectful relationship concerning **[Exploration Co.'s]** exploration program on its mining claims within n'Daki Menan. The Exploration Program activities are described in Appendix B (the "Exploration Program"), will last for the period of **[insert dates]** and will take place in the area described in the map attached as Appendix C ("Exploration Site").
- H. TFN, TAA and **[Exploration Co.]** wish to work together to establish a long-term, mutually beneficial, cooperative and respectful relationship based on trust and certainty, and to agree upon various matters regarding the Exploration Program.
- I. TFN/TAA will support the Exploration Program carried out in a manner that meets the terms of this MOU.

NOW THEREFORE this agreement witnessed that in consideration of mutual consideration and agreements herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. EXPLORATION PROGRAM

1.1 Exploration Program

[Exploration Co.] will diligently conduct the Exploration Program in a professional manner and will meet or exceed regulatory requirements and industry standards.

1.2 Exploration Results

Subject to the execution of confidentiality agreements, which shall be entered into as reasonably required, **[Exploration Co.]** will share the results of its Exploration Program with TFN/TAA on a quarterly basis.

1.3 Notices

[Exploration Co.] will provide TFN/TAA with:

- a) Copies of any Notices of Exploration Program Status and Notices of Material Change within two (2) days of provision of same to the Director, Ministry of Northern Development and Mines,
- b) Copies of any consultation reports within two (2) days of provision to the Director, Ministry of Northern Development and Mines,
- c) Notice of Intent to submit an exploration plan or application for exploration permit at least thirty (30) days prior to submission of an exploration plan under section 5 or

application for an exploration permit under section 12 of O.Reg 308/12 under the *Mining Act*

- d) Notice of intent to commence or recommence any proposed advanced exploration or mining activity at the earliest practicable date prior to filing a certified closure plan or amendment to a closure plan under section 140,141 and 143 of the *Mining Act*
- e) Notice of intent to conduct any work that requires a permit application to Ontario or Canada
- f) Notice of any proposed or actual sale, assignment or transfer of **[Exploration Co's]** claims or the property. The timeliness of such notice will be subject to **[Exploration Co's]** reasonable confidentiality obligations.

2. TFN/TAA SUPPORT

2.1 Access to Exploration Site

TFN/TAA shall use best efforts to ensure unfettered access to the Exploration Site by **[Exploration Co.]** or its affiliates, consultants, contractors, sub-contractors or agents during the term of this MOU. To the extent that access is restricted, TFN/TAA shall work cooperatively with **[Exploration Co.]** to resolve the issue.

3. ENVIRONMENTAL

3.1 Environmental Standards

[Exploration Co.] will meet or exceed a) the Prospectors and Developers Association of Canada Environmental Excellence in Exploration Guidelines (the "PDAC E3") as amended from time to time, and b) any applicable environmental standards under the Ontario's *Mining Act* including implementation of any and all mitigation measures respecting wildlife and site rehabilitation. **[Exploration Co.]** will operate in a safe and environmentally sensitive manner meeting any stricter standards to which the Parties agree in order to minimise any adverse impacts of the Exploration Program on the environment.

3.2 Environmental Monitoring

[Exploration Co.] will retain a qualified TFN or TAA member or representative as an Environmental Monitor during the Exploration Program. **[Exploration Co.]** agrees to provide full access to its site to the Environmental Monitor to allow the Environmental Monitor to monitor compliance with this MOU, impacts on the environment (including species at risk and endangered species), and to report monitoring results to TFN/TAA.

3.3 Traditional Ecological Knowledge ("TEK") Study

TFN/TAA will select and retain a consultant from a list of qualified consultants approved by TFN/TAA to conduct an assessment of the archaeologically and culturally significant sites, and areas of traditional use within the mining claim area and complete a Traditional Ecological Knowledge Study. **[Exploration Co.]** will pay the consultant's costs for the Traditional Ecological Knowledge Study. Subject to **[Exploration Co.]** respecting the confidentiality of, and intellectual property in, the information collected during the study, TFN/TAA will provide an executive summary of the study to **[Exploration Co.]**.

3.4 Scope of TEK

The scope of the Traditional Ecological Knowledge Study will be developed jointly by the Parties and will include, but not be limited to:

- (a) Input from any individual who holds a Ministry of Natural Resources-registered trap line on mining claim area, or whose trapping, hunting, fishing or other harvesting activities may be affected by the Exploration Program;
- (b) Input from the TFN/TAA about potential burial or other archaeologically and culturally significant sites; and
- (c) Input from the TFN/TAA about their values and traditional knowledge.

3.5 TEK Review

TFN/TAA community members will be consulted during the development of the Traditional Ecological Knowledge Study and may review and provide input on any draft reports. The Parties acknowledge that the Traditional Ecological Knowledge study is a living document that will be refined and updated over time with input from TFN/TAA community members.

3.6 TEK Impact Mitigation

[Exploration Co.] will use best efforts to address and mitigate the reasonable concerns raised during the Traditional Ecological Knowledge Study about the negative impacts of the Exploration Program on the environment and on harvesting, hunting, trapping fishing or other traditional cultural and spiritual activities of the TFN/TAA.

3.7 Permit Review

[Exploration Co.] shall ensure that the Exploration Program is carried out in a way to minimize the disturbance to the natural environment, through consultation with, and accommodation of, TFN/TAA. Such consultation will include timely provision to TFN/TAA of

- (a) proposed exploration permit applications prior to submission for regulatory approval,
- (b) exploration work plans and site rehabilitation plans on a quarterly basis.
- (c) any other application for a regulatory instrument prior to submission for regulatory approval

[Exploration Co.] will provide TFN/TAA the opportunity to respond and comment prior to the submission of such permits to the provincial or federal issuing authority. **[Exploration Co.]** shall consider such comments and any mitigation measures proposed and shall make best efforts to accommodate TFN/TAA's comments, concerns and requests.

3.8 TFN/TAA Peer Review Capacity

TFN/TAA may retain the appropriate technical expert(s) to peer review any information produced by **[Exploration Co.]** during the consultations and to provide comments, advice and recommendations relating to environmental effects, impacts on Aboriginal and Treaty rights, their avoidance and mitigation. **[Exploration Co.]** will fund TFN/TAA's reasonable budgeted costs of the technical expert(s). TFN/TAA will circulate the reports to

[**Exploration Co.**]. The Parties will meet as soon as practical following the completion and receipt of the reports.

4. BUSINESS OPPORTUNITIES

4.1 Common Objective

The Parties agree that it is their common objective to assist TFN/TAA and their members to benefit from Business opportunities associated with the Exploration Program.

4.2 Exchange of Lists of TFN/TAA Businesses and [Exploration Co.**] Contracting Needs**

TFN/TAA will provide [**Exploration Co.**] with a list of qualified TFN/TAA businesses, and [**Exploration Co.**] will provide TFN/TAA with a list of the kind of business that [**Exploration Co.**] will contract with during the course of the Exploration Program. The Parties will update their respective lists and share updated lists with each other.

4.3 Advance Notice of Procurement

[**Exploration Co.**] will provide TFN/TAA with advanced notice of all procurement opportunities and agrees to undertake best efforts to package Exploration Program contracts in a manner that assists qualified TFN/TAA Businesses to access business opportunities.

[Note to Draft: This section 4 can be tailored to the opportunity. Options include a right of first refusal for TFN/TAA businesses, requirement for all businesses to have a TFN/TAA partner.]

5. EMPLOYMENT AND TRAINING

5.1 Employment of TFN/TAA Members and Citizens

[**Exploration Co.**] agrees to undertake best efforts to employ TFN/TAA members and citizens during the Exploration Program. To this end, [**Exploration Co.**] will:

- (a) Circulate notice of job opportunities and qualifications to TFN/TAA on an ongoing basis
- (b) Interview on a priority basis, applicants from TFN/TAA
- (c) Hire on a priority basis, those TFN/TAA applicants who meet the job qualifications
- (d) Track and report to TFN/TAA the number of TFN/TAA members employed by [**Exploration Co.**]
- (e) Require any contractors or sub-contractors to comply with the provisions of this section.

5.2 Training of TFN/TAA Members and Citizens

[**Exploration Co.**] agrees to use best efforts to provide training opportunities for interested TFN/TAA members and citizens during the Exploration Program. To this end, [**Exploration Co.**] will:

- (a) Use best efforts to provide on the job training during the exploration Program
- (b) Provide written support for any applications for training funds related to the Exploration Program activities that may be submitted by TFN/TAA members and citizens to funding agencies

6. FINANCIAL PROVISIONS

6.1 Benefit Sharing

[**Exploration Co.**] acknowledges that TFN/TAA must benefit from activities within n'Daki Menan.

[Note to Draft: the Parties will negotiate the scope and amount that TFN/TAA will benefit from any profit from the exploration activity]

6.2 Reimbursement of TFN/TAA Reasonable Costs

[**Exploration Co.**] agrees to reimburse TFN/TAA for reasonable costs and expenses relating to the activities contemplated by this Memorandum of Understanding in accordance with a Workplan and Budget set out in Appendix D. The Workplan and Budget will be updated annually to reflect TFN/TAA's annual consultation costs to respond to [**Exploration Co.**] proposed activities in n'Daki Menan. Any amendment to the Workplan and Budget must be agreed to in writing by [**Exploration Co.**] prior to the cost or expense being incurred. [**Exploration Co.**] agrees to reimburse TFN/TAA for their reasonable costs and expenses in connection with the settlement of this Memorandum of Understanding prior to its execution (Collectively with costs in Schedule D, the "Costs"). Reimbursement of the Costs shall be as follows:

- a) TFN/TAA shall submit an invoice to [**Exploration Co.**] within 60 days of incurring any Costs and such invoice shall set out sufficient details of the nature and amount of the Costs;
- b) [**Exploration Co.**] shall reimburse TFN/TAA for the Costs set out in such invoice within 45 days of receipt of such invoice.

7. AGREEMENT TO NEGOTIATE IMPACT BENEFIT AGREEMENT (IBA)

7.1 Undertaking to Negotiate Further Agreements

When a favourable pre-feasibility report is received with respect to the Exploration Program and [**Exploration Co.**] elects to proceed with mine permitting, advancement or development, the Parties will negotiate and conclude an appropriate Impact Benefit Agreement. The agreement negotiations shall be undertaken in good faith and have regard to the scope, duration and estimated profitability of the mine. [**Exploration Co.**] agrees that it will fund TFN/TAA's reasonable costs and legal fees in respect of negotiating an IBA in accordance with an agreed upon budget and work plan.

7.2 Impact Benefit Agreement Content

The Impact Benefit Agreement will include, but not be limited to, , the following:

- (a) Communications;
- (b) Liaison personnel between TFN/TAA and **[Exploration Co.]**;
- (c) Community consultation;
- (d) Permitting review & consultation
- (e) Environmental impacts, protection and monitoring;
- (f) Traditional Ecological Knowledge identification and protection
- (g) Financial matters:
 - 1. Resource benefit/profit share
 - 2. Employment and workplace conditions
 - 3. Education and training
 - 4. Business and contracting opportunities for TFN/TAA businesses
- (h) An agreed implementation schedule delineating how the agreement will be implemented.
- (i) Other general legal provisions including dispute resolution

7.3 **[Exploration Co.]** to Cover TFN/TAA Reasonable Costs

[Exploration Co.] agrees to cover the reasonable costs of TFN/TAA and its consultants to peer review reports and to assess the environmental impacts on TFN/TAA that are identified in any environmental impact assessment study, pre-feasibility or feasibility study and agrees that this assessment will be conducted in conjunction with negotiating an IBA. The Parties will ensure that TFN/TAA comments on the environmental assessment and Traditional Ecological Knowledge are incorporated in the EA document.

8. NOTICES

Any notice, request, approval or other communication required or permitted to be given under this MOU or for the purposes of this MOU by any of the Parties to this MOU ("**Notice**") shall be given by personal delivery, by registered mail or other electronic means of communications addressed to the recipient as follows:

To TFN:

Temagami First Nation,
Bear Island
Lake Temagami, ON P0H 1C0
Attention: Chief and Council

Fax: 705-237-8959
Email: chief@temagamifirstnation.ca

Temagami First Nation,
Bear Island
Lake Temagami, ON P0H 1C0

Attention: Lands and Resource Manager

Fax: 705-237-8958

Email: robin.koistinen@temagamifirstnation.ca

To TAA:

Teme-Augama Anishnabai,
Bear Island
Lake Temagami, ON P0H 1C0

Attention: Chief and Council

Fax: 705-237-8959

Email: john.mckenzie@temagamifirstnation.ca

To [Exploration Co.]:



Attention:

Facsimile: ●

Email:

Or such other address, individual or electronic communications number as may be designated by notice given by any Party to the other Parties.

Any notice, request or other communication given by personal delivery shall be conclusively deemed to have been given on the day of the actual delivery thereof and, if by registered mail on the third (3rd) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal and confirmation thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. “**Business Day**” means every day except Saturdays, Sundays, Aboriginal Day, which is June 21, and statutory holidays in the Province of Ontario.

9. GENERAL

Any amendment to this MOU must be confirmed in writing by both Parties, with specific reference made to this MOU. This MOU shall be governed by the laws of Ontario and the federal laws of Canada applicable therein. This MOU may be executed by facsimile or by electronic signature and in one or more counterparts, each of which shall be considered an original but all of which together shall constitute one and the same agreement. The schedules form part of the agreement between the Parties. This MOU ensures to the benefit of the parties and their respective successors and assigns. Each Party acknowledges having obtained its own independent legal advice with respect to this MOU to the fullest extent deemed necessary by each Party prior to its execution. Furthermore, the Parties acknowledge that neither acted under any duress in negotiating, drafting and executing this MOU and any documents contemplated hereby. There will be no presumption that any

ambiguity in this MOU and any documents contemplated hereby be resolved in favour of any of the Parties.

10. TERM AND TERMINATION

This MOU shall take effect on the date of both Parties have executed the MOU. The MOU terminates upon 60 days prior written notice by either Party or upon the execution of an Impact Benefit Agreement.

11. ANTI-CORRUPTION COMPLIANCE

The Parties agree that any benefits to be provided to TFN/TAA under this MOU shall be used only for the purposes set forth in this MOU. Under no circumstances will any benefits be redistributed for the improper personal gain of any individual. **[Exploration Co.]** reserves the right to terminate this MOU if any funds paid under this MOU are utilized in contravention of the *Foreign Corrupt Practices Act* (United States)] **[Note to Draft: use if relevant]**

12. NO PARTNERSHIP OR AGENCY

Nothing in this MOU shall be construed as in any way constituting a partnership or an agency of or among the Parties; or be construed to evidence an alleged intention of any of the Parties to constitute any such relationship between TFN/TAA and **[Exploration Co.]**. Neither TFN nor TAA nor **[Exploration Co.]** shall have the authority or power to act for the other, or to undertake any obligation or responsibility to incur any liability on behalf of the other.

13. CONFIDENTIALITY

This MOU, including the schedules, and the discussions leading to the execution of this MOU, are confidential to the Parties unless there is a statutory or other legal obligation to disclose.

14. RESOLUTION OF DISPUTES

In case of a dispute arising from the implementation of this Memorandum of Understanding, the Parties agree to exhaust alternative dispute resolution models, such as negotiation and mediation before employing other forms of dispute resolution such as arbitration or adjudication, and shall act in good faith to resolve disputes.

15. INDEMNIFICATION

Each Party to this MOU agrees to defend, indemnify, and hold the other Party and its directors, officers, affiliates, employees, agents, consultants and contractors (as applicable) harmless from and against all damages, liabilities, claims, demands, allegations, losses, proceedings and expenses (including without limitation, reasonable legal fees and expenses) arising from any breach by the other Party of any of its covenants or obligations under this Agreement.

16. INSURANCE

During the Term of this MOU, Exploration Co. shall carry and maintain the insurance policies set forth below and shall present evidence in the form of a certificate of insurance

to TFN/TAA, from time to time, upon their written request. Such certificate(s) of insurance shall provide that the insurance required below shall not be cancelled or materially amended without thirty (30) days prior written notice to each of TFN/TAA. The Commercial General Liability and Commercial Umbrella Liability policies shall be written on an occurrence basis (not a claims made basis).

- (i) Commercial General Liability, including contractual liability insurance, covering claims arising out of bodily injury and property damage in an amount of \$2 million per occurrence and \$3 million general aggregate.
- (iii) All-risk property coverage including extra expense and business income coverage.
- (v) Commercial Umbrella Liability which shall be excess above the liability coverage required in subsections 15.1(i) above, with per occurrence and aggregate limits of \$5 million.

17. NON DEROGATION

The Parties agree that nothing in this Memorandum of Understanding shall be construed so as to abrogate or derogate from the Aboriginal, treaty or constitutional rights of the TFN/TAA. Nothing in this MOU restricts the ability of TFN/TAA to raise concerns with and make comments to regulatory agencies regarding the Exploration Program at any time.

18. REPRESENTATIONS AND WARRANTIES

- 18.1 Recognising that [**Exploration Co**] is entering this agreement in reliance upon representations and warranties by TFN/TAA as of the date of this MOU, TFN/TAA represent and warrant that the undersigned are the duly authorised representatives of TFN/TAA and have the necessary power and authority to execute and deliver this MOU on behalf of their respective members and citizens and this MOU has been duly authorised, ratified, executed and delivered.
- 18.2 Recognising that TFN/TAA are entering this MOU in reliance upon representations and warranties of [**Exploration Co**] as of the date of this MOU, [**Exploration Co**] represents and warrants that all requisite corporate and other action required to be taken in order to permit [**Exploration Co**] to enter into and perform this MOU has been properly taken.

19. SURVIVAL

The Parties agree that sections 6, 15, and 16 are legally binding and shall survive the expiration or termination of this MOU.

[Signatures on next page.]

IN WITNESS WHEREOF the Parties have caused this MOU to be executed in their respective names by their duly authorized representatives.

SIGNED, SEALED AND DELIVERED
(in the presence of)

TEMAGAMI FIRST NATION

Per:
Title: Chief
Date:
I have the authority to bind the First Nation

TEME-AUGAMA ANISHNABAI

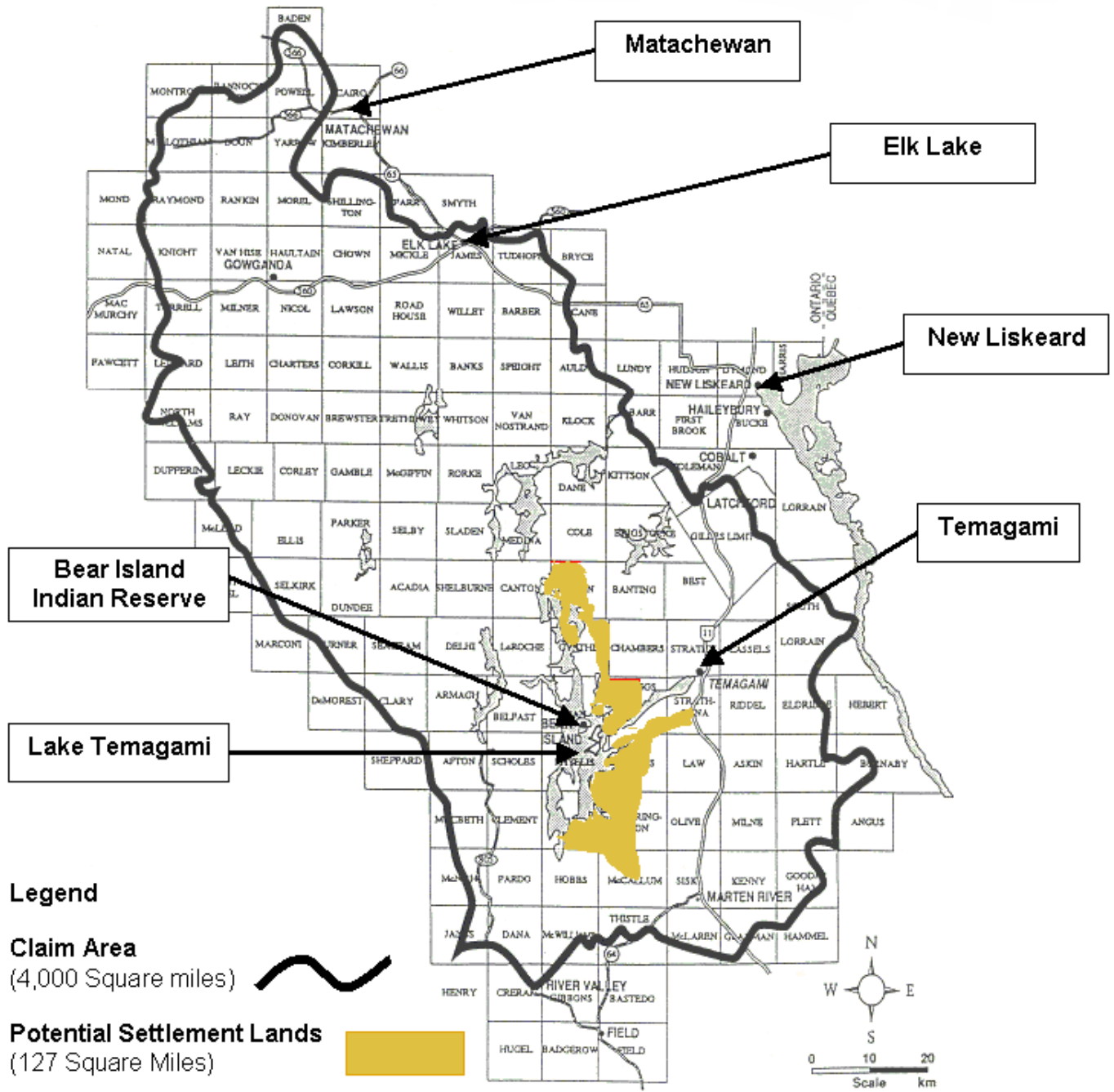
Per:
Title: Chief
Date:
I have the authority to bind the First Nation

[Exploration Company]

Per:
Title: President & CEO
Date:
I have the authority to bind the Corporation

Appendix A

Map of n'Daki Menan



Appendix B
Exploration Activities

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Appendix C
Exploration Site

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Appendix D
Workplan and Budget

[NTD: all of these may not be relevant in each case]

ACTIVITY	DATE OF COMPLETION	DELIVERABLE	COST
Review of permit applications by TFN staff or third party reviewer if needed			
Conduct Traditional Ecological Knowledge report			
Environmental/Archaeological monitoring			
Consultation with Community (dissemination of information to community, community meeting costs, elder honoraria)			
Third Party advisor costs for consultation			
[identify any other work agreed to]			
TOTAL			

Document #: 604960