



BC First Nations Energy & Mining Council

**Sharing the Wealth:
*First Nation Resource Participation Models***



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FNEMC Sharing the Wealth

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Section 1 Introduction

The BC First Nations Mineral Exploration and Mining Action Plan (2008) set out the agreed upon goals to ensure the meaningful participation of BC First Nations in mining projects situated in First Nation traditional territories. Goal 4 of the Action Plan, *Build Profitable and Sustainable Economic Opportunities for First Nations* calls for the creation of “a series of potential effective models for IBAs, profit and sharing equity between First Nations and mining and exploration companies”.

The objective of this paper is to contribute to this goal by setting out the principles, mechanisms and models that will help guide First Nation participation in resource developments in First Nation traditional territories. The content is not intended to be prescriptive – it is recognized that one size will not fit all and that each project will have its unique circumstances. Rather, the intent is to provide a clear explanation of the rights of British Columbia First Nations to participate and benefit from projects in their traditional territories and to set out a process and models through which the exercise of these rights may be realized.

Section 2 Background

2.1 Past Practices

The history of First Nation relationship with industry has been one of give and take – First Nations gave and Industry took. There are countless examples across Canada and in British Columbia of resource companies coming into traditional territory, interfering with the practice of Aboriginal and Treaty rights, taking natural resources and leaving without any compensation or benefits accruing to the impacted First Nations.

Any benefits that were offered to First Nations were at the pleasure of industry – there was no legislative requirement or other impetus for industry to provide any compensation or benefits to First Nations. The few companies that as “good corporate citizens” adopted an internal Aboriginal relations policy, did make efforts to contact and involve First Nation and other Aboriginal communities. However, even in these cases, the benefits were generally limited to a few short-term employment opportunities and some small business contracts.

Most involvement between industry and First Nations in the past occurred with respect to environmental issues. For example, legislation that does require consultation and input from First Nations are the federal and provincial environmental assessment processes. The EA processes have provided First Nations limited opportunity to have their environmental concerns heard and addressed, particularly during EA panel hearings. However, the funding meaningful participation by First Nations has been inadequate and input and accommodation of their interests was not guaranteed, was limited to environmental matters and did not address compensation or benefits.

The same is true for the planning processes imposed by government - forest management planning for example. In these processes, First Nation “values”, or areas of significance from a cultural or environmental perspective, are identified and may be accommodated to a limited degree within a forest management plan. In most cases First Nations were not adequately funded to identify these values and even where they did identify these values, the accommodation measures did not address compensation or benefits for the First Nations or their members or impacts on aboriginal and treaty harvesting rights.

Past practices have shown that it is unrealistic to expect that industry, who are understandably concerned primarily with their shareholders and their bottom line, will voluntarily seek to involve First Nations in any meaningful way through employment opportunities, business opportunities and sharing of the financial benefits of the project, unless they are required to do so.

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2.2 Current Situation

Things are changing. There are three key factors that have changed the landscape for the relationships between First Nations and Industry – First Nation Resolve, Duty to Consult and Investor Confidence.

2.2.1 First Nation Resolve

First Nations in recent years have developed a clear resolve not to allow industry to continue to reap the benefits from the resources in their traditional lands while ignoring the impacts on First Nations. As one Chief put it, “We are no longer prepared to be passive observers to our future”.

First Nations across Canada, including in British Columbia, have made it clear that they will use all mechanisms at their disposal to ensure that their interests are protected and that their communities and their members benefit appropriately from developments in traditional territory. It is important to note that most British Columbia First Nations are not anti-development but rather are seeking to ensure that development proceeds only with their involvement and consent.

2.2.2 Duty to Consult

The most significant impetus for meaningful changes in the relationship between First Nations and industry is rooted in the recognition by Canadian courts of the scope and application of Aboriginal and Treaty rights and the nature of the Crown’s duty to consult and to accommodate First Nations interests, and in certain circumstances to require the consent of First Nations. This recognition by the courts has forced the provincial and federal governments to become involved in what previously governments viewed as a bilateral First Nation-Industry relationship.

The recognition by governments, including the Province of British Columbia, that they must respect the Duty to Consult has led to establishment of bilateral processes in most provinces as First Nations and the provincial governments seek common ground on how the Crown will fulfill this legal obligation. A range of court decisions in the past ten years have begun to provide clarity on the nature and scope of First Nation rights within traditional territories. Landmark decision including Haida, Musquem, Dene Tha, Mikisew Cree and KI-Platenix among others, have established the right of First Nations to be consulted if resource projects may impact Aboriginal and Treaty rights.

The fact that First Nations may have entered an Exploration or Impact Benefit Agreement with respect to a project, does not in and of itself, relieve the Crown of its duty to consult and accommodate First Nation interests.

2.2.3 Investor Confidence

Investors are increasingly knowledgeable about the risks of ignoring First Nation interests when projects are located within traditional territories. High profile protests such as the Tahltan, KI, Six Nations at Caledonia, and Clearwater River Dene on oilsands development, have alerted investors to the perils of ignoring First Nation interests. Simply put, projects which have not reached agreements with First Nations are a greater investor risk – and industry recognizes this fact.

Section 3 Foundations

3.1 BC First Nations Mineral Exploration and Mining Action Plan Principles

The following principles as set out in the BC First Nations Mineral Exploration and Mining Action Plan are the foundation for the approach and models set out in this paper:

- **Respect and Recognition:** First Nations are the original owners and stewards of our lands and resources. There must be recognition of, and respect for, Aboriginal title and rights, and treaty rights, and for the governance systems and autonomy of individual First Nations. Aboriginal title includes the authority to use lands and resources, to choose the uses to which those lands and resources are put and to benefit from any economic component. Crown (federal and provincial government) and third parties must honour the international standard of free, prior and informed consent based on recognition of, and respect for, Aboriginal title and rights.
- **Reconciliation and Relationships:** Reconciliation and effective relationships are needed amongst First Nations, First Nations and Government, and First Nations and industry.

- **Crown Obligations:**
 - Shared decision-making: The Province must fulfill its commitment to developing new institutions and processes for shared decision-making over planning, management and tenuring as it relates to all phases of the mining cycle.
 - Economic Benefits: As the original owners and stewards of the lands, First Nations participate in economic benefits from mining development or protection in all its stages. The Province must fulfill its commitment to develop new institutions and processes for revenue and benefit sharing.
 - Consultation and Accommodation: Governments must uphold the honour of the Crown and fulfill the Crown's duty to meaningfully consult with, accommodate and compensate, First Nations regarding potential impacts to Aboriginal title and rights, and treaty rights. The Crown must account for the lasting impacts from past mining that infringe Aboriginal title and rights, and culture, and for future mining impacts.

- **Sustainability:** "Take care of the land and water and the land and water will take care of you." Mining development must be conducted in an environmentally, socially, ecologically, culturally and economically sustainable and viable manner for future generations to continue to exercise their rights make their own choices. Reciprocity remains a keystone of sustainability. First Nations sustainability and environmental standards must be respected.

- **Cultural Diversity:** The cultural diversity amongst First Nations must be respected, recognized and supported by governments, the public, and others through adaptive approaches and processes with respect to each First Nation's interests and priorities. The Crown and industry must respect First Nations shared territories and respect First Nations' ability to resolve shared territories issues through Indigenous knowledge, customs and laws.

- **Communication:** First Nations must be fully aware and informed of proposed mining and exploration activities in their traditional territory, prior to any activity. Communication must be ethical and respectful between all parties where First Nations are actively involved.

- **Quality Research and Information Sharing:** Quality, relevant information must be shared with First Nations in a timely and effective manner. First Nations must be involved in determining which studies need to be conducted, the development of the terms of reference for these studies, decision-making for the researchers and reviewers, as well as approval of the final product. All information and exchanges of information must be conducted in a culturally-appropriate fashion.

- **Indigenous Knowledge:** Indigenous knowledge, including proprietary rights, of First Nations will be respected. First Nations will direct the use and management of indigenous knowledge, including identifying when indigenous knowledge is confidential. Indigenous knowledge must be treated at least equal to Western knowledge and be incorporated respectfully into environmental assessment, research and development.
- **Education, Training and Capacity:** Comprehensive education, training and capacity building are priorities for First Nations. First Nations must have the understanding, human capacity and financial resources to meaningfully engage in decision-making with respect to mining development, and to be employed at all levels within the mining industry.
- **Accountability:** Crown and industry must be accountable for any infringement of Aboriginal title and rights, and for any environmental impacts.
- **Financial Resources:** First Nations need adequate financial resources to engage in shared decision-making processes (from the first discussions on the project to the closing of the mine) and for capacity building.

3.2 Compensation vs. Benefits

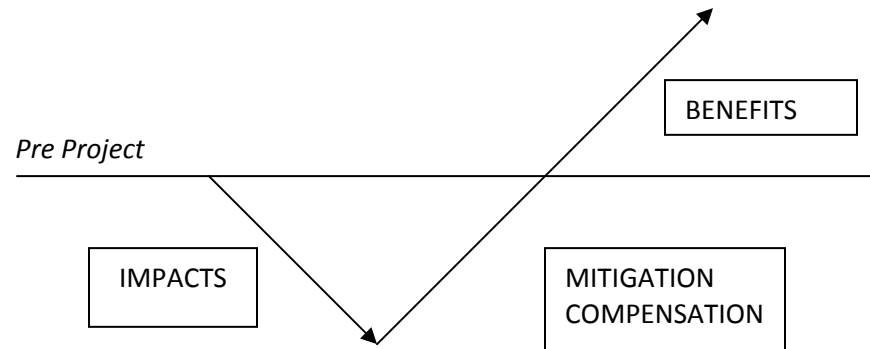
An important principle in the approach to the fair and equitable participation of First Nations in all resource projects including mining, is the difference between Compensation and Benefits.

Mitigation & Compensation is owed to First Nation for interference by projects with Aboriginal rights. This includes both physical interference and non-physical interference. Examples of physical interference includes things like property damage, damages to the environment and restricted access to traditional lands as result of project infrastructure. Non-physical interference must also be mitigated and compensated and includes things like loss of quiet enjoyment of traditional lands, impact on wildlife and socio-economic impacts on members and the community.

Benefits refers to a sharing of the wealth of the resources that are being extracted from traditional lands. Traditional lands were given by the Creator to First Nations and First Nations have the right to benefit from the riches of those lands.

First Nations are Entitled to both Mitigation/Compensation and Benefits from projects on traditional lands.

The following illustration may prove useful:



Consider the horizontal line to be the way things were before any stage of a project began. When it begins, there are impacts on Aboriginal rights and, as the downward arrow shows, things are worse for the First Nation and its members as result of rights having been interfered with. If the government and companies offer only Mitigation/Compensation for the interference with First Nation rights, then things only get back to the line – that is to say the damages caused have been paid for but the First Nation is no better off. If only mitigation measures and compensation is provided, then there are no Benefits to the First Nation and no reason to consent to the project proceeding. So it is clear, that unless there are *both* Mitigation/Compensation and Benefits provided to First Nations, there is little rationale for First Nations to consent to a project proceeding on traditional lands.

3.3 Resource Agreements

Resource Agreements are defined as a legally binding agreements between a resource company and the First Nation(s) whose Aboriginal or Treaty rights may be impacted by the activities of the proposed project.

The primary purposes of Resource Agreements are two-fold:

- First, to address the adverse effects of the project on First Nation rights, First Nation communities and First Nation traditional lands with the intent of mitigating these impacts to the extent possible and to provide some or all of the *Compensation* due to the First Nation where these impacts cannot be avoided; and,
- Second, to ensure that First Nation receives *Benefits* from the activities taking place in their traditional lands and from the resources that are being taken from their lands.

There are several different types of agreements under the Resource Agreement category that can be entered into depending on the stage of the Projects. These include exploration agreements, negotiation agreements and impact benefit agreements.

3.3.1 Exploration Agreements

Exploration Agreements (also referred to as Access Agreements, Memorandum of Understanding, Memorandum of Agreement or Feasibility Partnering Agreements) are entered into with resource companies as early as possible in the Project cycle. Ideally, an Exploration Agreement is in place prior to the commencement of any on-the-ground activities and are in place throughout the exploration and advanced exploration stages.

These agreements:

- provide a detailed description of the exploration activities;
- set out interim measures including employment and business opportunities;
- set out environmental impact mitigation measures the company will take;
- detail compensation with respect to the impact of the exploration activities and may include access fees;
- ensure capacity for the First Nation(s) to be consulted and to conduct due diligence with respect to the exploration activities;
- contain commitments with respect to the negotiation of an IBA if the project proceeds to the operations stage.

Exploration Agreements only provide First Nation consent for the Company to carry out exploration activities and are normally in effect until the Company makes a decision to proceed with or to abandon the Project. Exploration Agreements do not provide First Nation consent to the construction or operation of a Project – that consent, if provided, comes through ratification of an Impact Benefit Agreement.

3.3.2 Negotiation Agreements

Negotiation Agreements are entered into once a decision has been made by the proponent that they want to move to the operations stage based on their bankable feasibility study.

Negotiation Agreements:

- set out the terms and conditions for negotiation of an IBA;
- include interim measures for benefits while an IBA is being negotiated;
- set the agenda, topics and schedule for IBA negotiations; and,
- identify negotiation funding to support First Nation participation

3.3.3 Impact Benefit Agreements

Impact Benefit Agreements are entered into prior to the commencement of operations and normally apply during the entire operational period of the project. IBAs typically address the following:

- Non- Derogation. Provisions to protect Treaty and Aboriginal Rights
- Education and Training. Provisions to provide ongoing opportunities for First Nation members to become qualified for employment opportunities during all phases of the project;
- Employment Opportunities. Provisions to enable First Nation members to secure employment during all phases of the Project, at all job levels, and to reduce barriers to First Nation members employment on the Project;
- Workplace Conditions. Provisions to promote a workplace and working conditions that are safe, healthy and supportive of First Nation employees and which are respectful and supportive of First Nation culture;
- Business Opportunities. Provisions to maximize the benefit from business opportunities associated with all phases of the project;
- Financial Participation. Provisions to set out financial benefits from the resource and compensation for project impacts on First Nation and First Nation Traditional Lands;
- Consultation and Protection of Aboriginal and Treaty Rights. To establish a consultation process and promote measures intended to minimize the effects of the Project on the exercise of aboriginal and treaty rights by First Nation and its members;
- Environmental Protection, Mitigation, Monitoring and Reporting. To establish and promote measures intended to protect the environment and minimize the adverse environmental effects of the Project;
- Ongoing Communications and Consultation Between the Parties. To set out implementation processes that will guide the ongoing relationship between the parties including a dispute resolution process;
- Ratification. Provisions requiring approval of draft IBAs by the members of the affected community; and,
- Other topics as may be agreed specific to the project (e.g., right of ways.)

3.4 Revenue Sharing vs. Resource Agreements

There is an fundamental and important distinction between Revenue Sharing Agreements and Resource Agreements:

Revenue Sharing Agreements are agreements between First Nations and the Province or Canada in which the revenues are collected by the Province or Canada with respect to resource projects in traditional territories, are shared with the First Nations. This includes but is not limited to taxes, royalties, penalties, permit and other fees.

Resource Agreements are agreements between First Nations and Industry in which the benefits from the Project are shared with the First Nations. Such benefits include but are not limited to business opportunities, employment, training and financial participation.

First Nations are entitled to both Revenue Sharing and Resource Agreements.

It is not accurate, as some in Industry have asserted, that by entering a Revenue Sharing Agreement, Industry is thereby relieved of its obligations to enter Resource Agreements that contain financial participation and benefits for First Nations.

It is also not accurate, as some in Government have asserted, that by entering a Resource Agreement, Government is thereby relieved of its obligation to enter Revenue Sharing Agreements with First Nations.

3.5 Rights and Resource Agreements

Resource agreements can properly be viewed as an implementation the rights held by First Nations to be compensated for interference with their rights and to benefit from the riches of their traditional lands. Resource Agreements, including Exploration and Impact Benefit Agreements, must however include provisions to make it clear that such agreements do not and are not intended to:

- Define Rights
- Derogate Rights (take away from)
- Abrogate Rights (eliminate)

Section 4 Model for First Nation Financial Participation in Mining Projects

4.1 Financial Models

There are many options for the design of First Nation financial participation in mining and other resource based projects. Generally they fall within the following five types:

- Gross Overriding Royalty
- Equity
- Profit Share
- Fixed Payments
- Guaranteed Base with Upside

4.1.1 Gross Overriding Royalty (GORR)

A gross overriding royalty is an interest in the revenue from the sale of product (e.g. oil, gas, iron, gold) produced at a specific property. It is usually expressed as a percentage of the gross revenue from the property. It is paid by the Company from gross revenues (meaning the value of the product) before any expenses and claims by Company are deducted.

A GORR is an excellent approach for a government or First Nation, as a GORR is calculated before any expenses are deducted. Provincial governments often impose a GORR on specific resource types (e.g. potash in Saskatchewan). Companies are understandably reluctant to offer a GORR for Impact Benefit Agreements and there are very few IBAs where this approach has been incorporated. The exception is for projects which are located on reserve lands and in these cases the First Nation will impose a GORR equivalent to that which the province otherwise would have imposed had the project been off reserve.

4.1.2 Equity

An equity stake in a project is ownership in whole or in part of the Company. For public companies, such interests is held through ownership of shares in the Company. Both Shares and Stock Options (the option to purchase shares at fixed price with a determined period of time) can be issued to a First Nation. Payments from projects in which First Nations hold equity are calculated on a percentage of net profits, through share dividends or both.

Acquiring equity in a Company in an IBA can be achieved in two basic ways. Ownership can be expressed as a carried interest which means that the First Nation is granted ownership (either a percentage or shares depending on the structure of the Company) and therefore does not pay anything for its equity share. The second way of acquiring equity is for the First Nation to purchase its share. Some IBA agreements make provision for both.

An important but difficult concept to understand is that in some situations, whether equity is granted through a carried interest to a First Nation, or whether the First Nation has to purchase their interest, it can have the same impact on the financial payment stream to the First Nation. In the case where the Company agrees that the Project will carry the debt required for the First Nation to purchase its share, and will deduct the principal and interest related to that debt from the First Nation's share of the profits, then it is the same net impact as if the First Nation had been granted a share of the Project which then required that the carried interest be debt financed as part of the overall Project debt.

An equity participation payout is always on the bottom line – net profits. This means that the First Nation share will be entirely dependent on the revenues and expenses that the Company attributes to the Project.

4.1.3 Profit Share

Sharing in the profits of a Company without acquiring an ownership stake is a common in many Impact Benefit Agreements. This share is generally expressed as a percentage of net profits less excluded items. Because Companies often have more than one Project, it is critical that care be taken expenses not directly related to earning the profits on the specific project are not deducted from the Project in which the profit share is being negotiated – such expenses are defined as excluded items. The calculation of the First Nation share is critical and the model provided in Section 5 of this report sets one possible approach to such calculations.

Because profit share will fluctuate from year to year, many IBAs include provisions for minimum annual payments to the First Nation so that First Nation implementation costs and other Project related commitments can be covered in years where the Project is not profitable. This provision does not increase the amount that a First Nation would receive over the life of a Project as the profit share calculations are cumulative- such that over the life of Project, the First Nation receives its agreed upon percentage of life mine profits. As such, any advances through minimum payments are recoverable.

4.1.4 Fixed Payment

Fixed payments are predetermined fixed amounts usually paid annually. Such payments do not fluctuate with the profitability of the Project. A fixed payment approach is not recommended and has proven very costly to First Nations who have taken this option.

4.1.5 Guaranteed Base with Upside

The calculation of a Guaranteed Base is achieved in the following manner. The Company's bankable feasibility study includes their profitability projections for the Project based on a number of assumptions with respect to price, exchange rates, mineral reserve, expenses etc. A guaranteed base is calculated as an agreed upon percentage of the expected profits as set out in the Company's bankable feasibility study.

The upside, refers to any profits that the Company makes over and above its bankable feasibility study projections.. First Nation participation in the additional profits, or upside, are calculated on an agreed upon percentage which may be the same or higher than that applied in the calculation of the guaranteed base.

In the event that the Project earns less than the amount projected in the Company's bankable feasibility study, the First Nation receives the guaranteed base in each year that the project operates.

5 Illustrative IBA Financial Schedule

Provided for Illustrative Purposes Only

Section 1 sets out the financial benefits which in this illustration includes a percentage of the Company profits related to the specific mining project, a signing payment payable when the IBA is signed, a scholarship fund, stock options and shares in the Company. This list should include all negotiated financial compensation as determined by the Parties.

The percentage of profits due to the First Nation is calculated on a cumulative basis. This means that the First Nation share in any given year is equal to the First Nation percentage of the total profits made by the Company up to the date the First Nation payment is calculated, minus the amount made up to the same time in the previous year. In the event that there was year in which the Company lost money, the First Nation obviously would not receive any profit share.

1. In consideration for the undertakings and commitments set out in this Agreement, Company agrees to pay to First Nation the following:
 - An annual payment of X% of the Mine Project portion of Company's net income for the year determined in accordance with Generally Accepted Accounting Principles and attributable to Project carried out in the Mine Project Area (the IBA Net Income Share) . The annual payment shall be calculated as the greater of:
 - X% of the Cumulative Mine Project Net Income at the end of the year minus the Cumulative Mine Project Net Income at the end of the preceding year, and;
 - Nil.
 - A \$xxxxxxx payment upon ratification and signing of this Agreement;
 - An annual scholarship fund of \$xxxxxx;
 - Stock options for the right to purchase xxxxxx shares of the Company annually for the first five years of operation for a subscription price of per share value as of the execution date of this IBA Agreement.
 - Granting of xxxxxxxx Company common shares upon ratification and signing of the IBA agreement;

Section 2 establishes the right of the First Nation to appoint an auditor to check that the Company has fairly and accurately calculated the First Nation payment including all revenues related to the Project and not including any expenses that are not related to the Project.

2. First Nation will have the right to appoint an auditor to inspect Company' financial records to ensure that they have calculated the payments accurately.

Section 3 allows the First Nation to have first opportunity to purchase an items which the mine decides are surplus to its requirements. This can be particularly important when the mine closes as it provides the opportunity for the First Nation to acquire buildings, equipment and supplies. There is no obligation for the First Nation to acquire any items unless they choose to do so.

3. Company grants to First Nation the right of first refusal to purchase any and all items that Company, in its sole discretion, designates as Surplus Equipment. Company will determine, in its sole discretion, the timing and the terms and conditions under which it may dispose of any Surplus Equipment.

Section 4 requires the Company to maintain separate accounting records documenting how the calculations were made to determine the annual amounts due to the First Nation.

4. Company shall maintain full and complete books and records with respect to all matters relating to the determination of Mine Project Net Income and payment of the IBA Net Income Share other payments outlined in section 1. above, to First Nation pursuant to this Schedule in accordance with generally accepted accounting principles in Canada consistently applied and good mining practices.

Section 5a lists the documents that the Company must provide to the First Nation each year showing how they calculated the First Nation payment. It must include a report by an external auditor confirming that the payment was calculated correctly

5. Company, on or before May 31st of each Year or portion of a year during which this Agreement is in force, shall deliver the following to First Nation in relation to the previous Year (the "Completed Year"):
 - a. Schedule of Mine Project Net Income for the Completed Year including:
 - i. A detailed schedule of Mine Project Revenue for the Completed Year;

- ii. A schedule of Mine Project Direct Operating Expenses Company Corporate Overhead Expenses and other amounts deducted in arriving at Mine Project Net Income in accordance with this Schedule for the Completed Year itemized by major expense category;
- iii. A calculation of Mine Project Net Income, Cumulative Mine Project Net Income and IBA Net Income Share for the Completed Year;
- iv. A summary of significant accounting policies, assumptions and estimates made by the Corporation in calculating Mine Project Net Profit.
- v. An auditor's report prepared by Company's external auditors stating that they have audited the Schedules of Mine Project Revenue Operating Expenses and Net Income, Mine Project Cumulative Net Income and the calculation of the IBA Net Income Share and all related determinations made by Company; that they conducted their audit in accordance with generally accepted auditing standards; and the auditor's opinion, as to whether the Schedules of Mine Project Net Income and Mine Project Cumulative Net Income and schedule of IBA Net Income Share are in all material respects in compliance with the provisions of Schedule.

Section 5b allows the First Nation to request additional information on how their payment was calculated. The Company must provide this within 45 days

- b. First Nation shall have the right to make reasonable requests of Company for additional relevant information, details or explanations with respect to the Schedules of Mine Project Net Income, Mine Project Cumulative Net Income and the calculation of the IBA Net Income Share to assist them in their understanding. Company shall make all reasonable efforts to respond within forty-five (45) days of receiving a request for such information, but has the right to refuse to comply with unreasonable requests.

Section 5c allows the First Nation to appoint their own auditor to review the Company's records and requires the Company to cooperate.

- c. First Nation shall have ninety (90) days from receipt of the items provided pursuant to paragraph 2.a in this Schedule to notify Company of its intentions to appoint, at its own expense, an independent auditor. The audit terms of reference shall be made available to Company and the audit itself shall be performed by a licensed public accountant as defined under the relevant provincial or territorial public accounting legislation and the audit shall be performed in accordance with generally accepted auditing standards as defined by the Canadian Institute of Chartered Accountants.

- i. Such audit shall be for the purpose of preparing a written report for First Nation on whether the Schedules of Mine Project Revenues, Operating Expenses, Net Income and Mine Project Cumulative Net Income and the calculation of the IBA Net Income Share has been prepared in accordance with the provisions of Schedule.
- ii. The independent auditor appointed by First Nation to conduct an audit pursuant to this sub-paragraph 13.1 c) will be required to sign a confidentiality agreement with Company reflecting the fact that such audit information is made available to the auditor for the purpose of conducting the audit and not to be passed over to the First Nation, other than as incorporated into the audit statement in accordance with Generally Accepted Accounting Principles (GAAP).
- iii. Company will make every reasonable effort to co-operate with the examination by the auditor appointed by First Nation and will provide to the auditor with access to relevant accounting records and reasonable access to individuals as reasonably requested by the auditor.

Section 5d sets out a dispute resolution process if there is a disagreement with what the payment to the First Nation should be. The Company's auditors and the First Nation auditors will select an independent auditor to do a review.

- d. If an audit conducted pursuant to sub-paragraph 13.1 c) ii results in a determination that there is a deficiency in the IBA Profit Share, such deficiency shall be presented to Company. If Company disagrees with the determination, then a process of mutual resolution will be sought, which if not concluded within a reasonable time frame, the auditors for the parties shall appoint a third firm of independent auditors to consider the asserted deficiency. The determination of this audit will be binding on both parties. Any adjudged deficiencies from either the audit conducted by First Nation auditor with which Company agrees or by the audit conducted by an auditor as mutually agreed by the parties' auditors will be resolved by adjusting the next payment due hereunder, until the amount of the excess or the deficiency has been resolved. The obligation to make any such payments due and owing on the date of termination shall survive termination of this Agreement.

If it turns out that the Company has underestimated the First Nation payment by 15% or more, that the Company will be responsible to pay for the third party auditor otherwise they will be shared.

- e. Should the audit discover a deficiency in the amount of the additional payment in excess of fifteen percent (15%) of the payment amount then the audit fees will be paid by Company.

Section 6 is very important as it makes it clear that the financial provisions as set in the Financial Schedule, represent all the financial benefits the First Nation will receive over the life of the mine. It also makes it clear that how the funds received by the First Nation will be used, is up to the First Nation to determine.

6. While it is acknowledged that First Nation shall have the right to allocate the benefits provided by Company in this Schedule as it sees fit, the intention is that the annual payments referred to in paragraphs 1. above cover all financial contributions from Company made to First Nation and are to be used to implement First Nation obligations under this Agreement and to fund any programs or Project that First Nation may from time to time deem necessary or desirous. For greater clarity, Company will not be required to make any further financial contributions to First Nation for the Life of the Mine to cover the costs of any such programs.

The following section provides the technical definitions for the terms used in the Financial Schedule and forms a part of the Schedule.

DEFINITIONS

7. For the purpose of this Schedule, the following definitions shall apply:

“Cumulative Mine Project Net Income (loss)” means: for any Year or portion of a Year, the sum of the Mine Project Net Income (loss) calculations for all Years or portions of Years up to and including the Year or portion of a Year for which the calculation is being made.

“Company Corporate Overhead Expenses” means: a reasonable portion of Company’s general administrative and other expenses calculated in accordance with Generally Accepted Accounting Principles incurred in earning Mine Project Revenue in respect to the project other than excluded items.. The Company Corporate Overhead will be calculated in respect of each Year or portion of a Year during which this Agreement is in force and shall not exceed the fairly and reasonably allocated percentage calculated in a manner consistent with charges to other operating or capital Project.

“Dollars” means: unless otherwise stipulated, any reference to dollars refers to Canadian dollars.

“Excluded Items” includes:

- i) the amount by which Related Party Transactions (expenses) exceed fair market value.
- ii) expenses related to stock based compensation;
- iii) legal or other professional fees related to Excluded Items;
- iv) expenses or outlays related to Excluded Items;
- v) arbitration, litigation and other similar costs related to Excluded Items;
- vi) doubtful accounts and bad debts on sales of goods, products and services to Affiliates or Associates of Company and other parties not dealing at arm’s length with Company.

“Mine Project Exploration Expenses” means the reasonable cost of exploration expenses calculated in accordance with generally accepted accounting principles and incurred to investigate the possible extension of the Operations Phase of the Project, including prospecting, drilling, bulk sampling, conceptual and detailed engineering, economic evaluation and project permitting within the Mine Project Area.

“Mine Project Net Income (loss)” means in respect of each Year or portion of a Year commencing with the Year or portion of a Year in which the Mine Project achieves Commercial Production and during which this Agreement is in force that portion of Company’s annual net income or loss determined in accordance with this schedule and Generally Accepted Accounting Principles attributable to the Corporations activities in the Mine Project Area calculated as Mine Project Revenue minus the sum of:

- i) Mine Project Direct Operating Expenses,
- ii) Mine Project General Administrative and Other Expenses,
- iii) Mine Project Exploration Expenses
- iv) Income taxes, current and future.

“Mine Project Direct Operating Expenses” means: in respect of each Year or portion of a Year a reasonable portion of the Cost of Goods Sold and other direct expenses calculated in accordance with Generally Accepted Accounting Principles and incurred by Company during such Year or portion of a Year to earn Mine Project Revenue, in respect to the Project other than expenses related to Exclude Items.

“Mine Project Revenue” means: in respect of each year or portion of a year during which this Agreement is in force, all that portion of Company Revenues determined in accordance with Generally Accepted Accounting Principles earned in the Mine Project Area in relation to the Project and including without limitation and without duplication:

- a) Revenues from the sale of minerals mined in the Mine Project Area such provided that these Revenues shall not be less than the amount used annually in determining the basis for mining royalties;
- b) Any gain on disposal of Company assets used to earn Mine Project Revenues Insurance proceeds, provided that the related losses and expenses are included in determining Mine Project Net Income;

- c) The fair market value of any Project related assets or services provided or sold to Company or its affiliates or any related parties at any time during the course of the Project less related costs and expenses;
- d) Non-repayable government assistance, including, grants, or contributions received by Company, or any of their affiliates in connection with the Mine Project but excluding amounts received in connection with expenditures not deducted in determining Mine Project Net Profit.
- e) Other revenues and income – a reasonable proportion of other revenues and income earned by Company and calculated in accordance with Generally Accepted Accounting Principles and attributable to the project.

“Surplus Equipment” means: any item or part thereof, of any good, material, vehicle or equipment that is owned by Company and located within the Project Area that Company, in its sole discretion, deems to be surplus to Company’s needs at any time during the Life of the Mine.

“Year” means: the calendar year.

Section 6 Summary

First Nations have right to be compensated for interference with their Aboriginal rights and where applicable, Treaty rights *and* they have a right to benefit from the riches of the resources in their traditional lands. This report is intended to provide BC First Nations with some insight into the approach and models that can be considered to implement these rights with respect to specific projects in traditional lands.

This report is not comprehensive nor definitive as there are many approaches and variations which are First Nation and Project specific. First Nations must have technical, legal, financial and environmental support to negotiate fair and equitable resource agreements. Funding First Nations for such negotiations is the responsibility of government and the proponents, not First Nations.