

Survey of Exploration Agreements

The negotiation of exploration agreements is a way for mining companies to establish a good relationship with local Indigenous groups prior to mining activities and exploration. They typically will be entered into prior to IBAs and will not be as comprehensive as IBAs. Among other things, they outline the type of permitted exploration, and define the area subject to exploration.

Exploration agreements may provide Indigenous communities with the opportunity to obtain information and give feedback on the type, timing and location of the exploration activities on their traditional territories. Some exploration agreements will include a provision whereby the parties commit to entering into an IBA before the proponent can proceed to construction and mine development. See "*Termination and Renegotiation*".

We reviewed eight exploration agreements to provide summaries of the standard terms of exploration agreements. In addition, we searched for exploration agreements from NWT, Yukon and Nunavut and were able to identify a public exploration agreement from the Yukon. The publicly disclosed exploration agreement from the Yukon is the Exploration Memorandum of Understanding between Predator Mining Group and Kaska Nation, entered into on January 28, 2013 (Predator – Kaska Exploration MOU).

Definition of “Exploration Activities”

Exploration Agreements typically include a definition of the anticipated “exploration activities.” The definition of “exploration activities” will typically depend on what work the proponent intends to conduct in the area in question and at what stage the project is at.

Exploration activities are typically defined as activities undertaken in a specified area to determine the extent, geometry and grade of target mineral deposits. These activities may include, but are not limited to, geophysics, geochemistry, environmental studies, site reconnaissance, line cutting, geophysical air and ground surveying, temporary work camp operations, small diameter/low density drilling, high density drilling and/or bulk sampling through large diameter drilling, pitting, trenching and surface stripping, shaft dewatering and rehabilitation, metallurgical test work, processing test work, economic evaluation scoping and/or feasibility studies, construction of new exploration infrastructure and upgrades to existing infrastructure including, but not limited to, roads, bridges, on-site buildings, and satellite camps.

Commitment from Indigenous Groups

Exploration agreements typically require minimal commitment from Indigenous groups. Indigenous groups will consent to exploration activities conducted in accordance with the established framework in the exploration agreement, including with respect to environmental protection and restrictions for exploring traditional lands. In the Predator – Kaska Exploration MOU, the Kaska Nation agreed to support Predator’s exploration of the properties. For greater certainty though, Kaska’s support for Exploration Activities does not constitute Kaska support for mine development.

Support from the Indigenous community means that the Indigenous group will allow the proponent to access the properties freely and without interference or obstruction from the Indigenous groups.

In addition, the Indigenous group can covenant to provide letters of support when requested, as is the case in the Predator – Kaska Exploration MOU, whereby Kaska will provide letters of support to regulators and other government authorities and officials for permits, authorizations, tenures and other approvals related to the exploration activities. Under the exploration agreement, Kaska can also participate in relevant meetings with government officials and authorities with respect to Predator's exploration activities.

Exploration Agreements often clearly delineate between supported exploration activities, and not-yet supported activities, such as the development of a mine (typically such support would be provided through the negotiation of a comprehensive IBA). For example, in the Predator – Kaska Exploration MOU, Kaska reserves the right to take any position with respect to any permits, licenses or other regulatory matters other than Predator's Exploration Activities and any other activity of Predator in, or that would affect, the Kaska Traditional Territory or Kaska. This is a common provision in exploration agreements whereby the Indigenous group reserves the right to oppose any application for permits or any proposed exploration.

Authority

It is important to ensure that the party entering the exploration agreement on behalf of the Indigenous community is authorized to represent the members of the community. Typically, the Indigenous group will represent that they have legal power, capacity and authority to enter into the agreement and to carry out its obligations under the agreement. In addition, they will usually represent that signatory has taken all necessary actions and obtained all necessary internal approvals to enter into such agreement. A copy of the resolution from the Indigenous group's band council may be required under an exploration agreement as evidence that the Indigenous group approves of the exploration agreement and authorizes its execution.

In addition to covenanting that the party to the agreement has authority to represent and bind the Indigenous group, the Indigenous group can also covenant to facilitate discussions with neighbouring Indigenous communities under the exploration agreement. For example, the Kaska Nation agreed to provide input toward and may help facilitate, a resolution of any issues that may arise between Predator and any other aboriginal group directly affected, or which asserts to be directly affected, by Predator's Exploration Activities.

In the Kaska Exploration MOU, Kaska represented that they have full authority to enter into the exploration agreement. This is especially important because the Kaska Nation is comprised of a number of different Indian bands and acts as an umbrella organization when negotiating and entering into such an exploration agreement. Without adequate representation that Kaska has sufficient authority to represent the different Indian bands, it is possible that an individual Aboriginal community will seek to exercise its rights in a manner inconsistent with the terms set out in the exploration agreement.

Financial Obligations

Compensation paid in exploration agreements is often tied to specific elements, such as reimbursing the cost of negotiation, or compensating a community for impacts to land.

The financial compensation to be paid to the Indigenous group can be structured in many different ways. It can be a lump sum payment upon the execution of the exploration agreement, an annual contribution to a fund established for the Indigenous group's community for the duration that exploration is conducted or to a fund to compensate the Indigenous group for any negative consequences arising from the exploration, a percentage of annual exploration budget or an issuance of shares or share purchase warrants in the proponent.

In our review, we have seen a range of [REDACTED]

[REDACTED] Multiple exploration agreements also provided for the issuance of shares. The approximate value of share issuances fall within the range of \$ [REDACTED]

In addition to commitments to provide funding, there can be additional compensation promised in circumstances where there are measurable and significant impacts on traditional lands and the pursuit of traditional activities by members of the Indigenous community on their lands. The method of determining whether there are measurable and significant impacts should be expressly set out in the agreement. In the Predator – Kaska Exploration MOU, Predator agreed to provide reasonable compensation to Kaska families and individuals for proven loss resulting from a disruption of trapping, hunting, fishing, and gathering as a result of Predator's exploration activities.

Potential resulting from the challenges junior mineral proponents face in raising capital, issuing equity to Indigenous communities remains a common method of providing consideration under an exploration agreement. For example, in the Predator – Kaska Exploration MOU, Kaska received common share purchase warrants to Golden Predator Corp., Silver Predator Corp. and Redtail Metals Corp. The exploration agreement provided that 300,000 Gold Predator Corp. share purchase warrants exercisable at approximately \$0.50, 200,000 Silver Predator Corp. share purchase warrants exercisable at approximately \$0.70 and 100,000 Redtail Metals Corp. share purchase warrants, exercisable at an unknown price. In addition, Predator agreed to contribute 2% of all monies spent in carrying out the on the ground exploration activities on the property. The money was to be paid into the Kaska Community Fund through the Kaska Resource Agency.

Procurement

Exploration agreements will typically require the proponent to provide advance notice to the Indigenous group of specific contracting opportunities and a list of potential future contracting opportunities.

Protocols are typically established to require a proponent to consider procuring goods and services from Indigenous businesses. Though hard targets on procurement are rare, some

explorations agreements require a proponent to give reasons for not accepting a bid from an Indigenous supplier, or, where an Indigenous supplier is selected, to provide regular feedback on the contract performance.

In order to encourage the development of business capacity within the community, some exploration agreements allow for a lump sum to be paid to an Indigenous community in lieu of spending money on Indigenous businesses. Such mechanisms encourage a proponent to identify and encourage local suppliers, rather than 'lose' the funds altogether.

In the Predator – Kaska Exploration MOU, the parties agreed to work on a collaborative basis to pursue opportunities for Kaska with respect to services required by Predator. Such collaboration may include the formation of business joint venture partnerships with the support of Predator. Predator also agreed to conduct open-book negotiations on a preferred basis with Kaska Businesses for any goods and services that may be required during the exploration activities and will seek to award contracts through the open-book process in accordance with established protocol in the exploration agreement. The exploration agreement stipulates that Predator retains the ultimate discretion in their final business decisions and expressly allows for Predator to choose whatever contractor or supplier it deems appropriate in the circumstance where Kaska businesses cannot react in a timely basis and where Predator requires immediate action and supply of goods or services.

Employment and Training

Exploration agreements typically acknowledge that employment and other business opportunities in the initial exploration stages are limited, but will increase if the development of the project progresses. There is usually also a provision relating to employment and training in exploration agreements. In particular, proponents will typically agree to circulate a list of potential employment opportunities to the Indigenous group on an ongoing basis, will interview Indigenous applicants on a priority basis, and will employ those applicants who meet the minimum job qualifications.

In addition, proponents will generally make commercially reasonable efforts to provide training opportunities to the Indigenous group members. The proponent will typically qualify their commitments with what is "commercially reasonable," or subject to the service and products being provided at a competitive price with comparable levels of quality.

Predator in its exploration agreement with Kaska agreed to make reasonable commercial efforts to employ Kaska citizens during the exploration activities. The exploration agreement requires Predator to circulate notice of job opportunities and minimum qualifications and experience to Kaska, interview Kaska members on a priority basis, hire Kaska members on a priority basis if they meet the minimum job qualifications and requirements, track and report to Kaska on a quarterly basis the number of employed Kaska members, and work to ensure that any contractors or sub-contractors employed by Predator also uses the employment protocol.

In addition, Predator covenants to make reasonable commercial efforts to provide training for on the job opportunities and provide written support to any applications for training funds related to the exploration activities that may be submitted by Kaska to funding agencies.

Environmental

The proponent will usually covenant to act in accordance with all relevant environmental legislation and industry standards of best practice. There is typically protocol established for environment monitoring, including the appointment of a community monitor to observe exploration activities and ensure environmental compliance. Where a monitor identifies any instances of non-compliance, the proponent will typically be required to undertake appropriate remedial measures..

In the Predator – Kaska Exploration MOU, Predator agrees to comply with its environmental policy and with the E3 Environmental Excellence in Exploration standards developed by the Prospectors and Developers Association of Canada, including implementation of described mitigation measures respecting wildlife.

The Predator – Kaska Exploration MOU also requires that Predator continually consults with Kaska members, such as trappers, while conducting exploration activities. For example, Predator commits to consulting with Kaska in advance of applying for any work permits it needs to conduct its exploration activities, and must disclose its proposed activities. Predator must then consider any traditional knowledge and traditional land use information relating to the permit application. Kaska will also be able to retain the appropriate qualified technical experts and Predator will fund Kaska's reasonable budgeted costs of the technical experts. Finally, Predator must ensure that exploration activities are carried out in a way that minimizes the disturbance to the natural environment through consultation with Kaska.

Traditional Knowledge and Traditional Territory

Exploration Agreements typically provide opportunities for the Indigenous community to share their traditional knowledge with the proponent and identify areas of cultural, spiritual or traditional importance. Once these areas are identified, the proponent can either undertake not to do work in the area or otherwise consult the Indigenous group to see whether an agreement can be reached for how to approach work in those areas.

In addition, the proponent can agree to not carry out exploration activities or acquire mining claims outside of the area specified in the exploration agreement and within traditional territories without the written consent of the Indigenous group (the ability to withhold consent on unreasonable grounds is often restricted).

In the Predator – Kaska Exploration MOU, Predator is required to follow the Traditional Knowledge Protocol stipulated in the agreement as well as seek Kaska local and traditional knowledge about potential burial, archaeological or other significant sites. Kaska will set out a process and the conditions by which such local and traditional knowledge may be shared and Predator will only be committed to incorporate such information that is shared with it.

Community

It is typical under an exploration agreement for a fund to be established with proceeds from the Company so that the community can benefit from the exploration. The contribution can be a

lump sum or can be tied to the expenses of the proponent. For example, a percentage of the exploration funds can be paid to the impacted community. The range that we see from our review is from ████████ % of money spent in carrying out the exploration work. Such funding is discussed further under "*Financial Obligations.*"

It is also common for proponents to covenant in exploration agreements to enforce a strict no alcohol and drugs policy or to implement a firearms and hunting ban on their worksites.

In the Predator – Kaska Exploration MOU, a fund was established to ensure that funds are distributed between each community in their proportional share. The purposes of each Kaska Community Fund included support for health, education, housing, recreation and cultural activities.

Consultation

Under an exploration agreement, the Indigenous group can be required to engage in consultation relating to matters such as potential environmental impacts and impacts on the Indigenous group's Aboriginal interests. Such engagement may be recorded by the proponent to support applications for permit and other governmental authorizations.

Exploration agreements on occasion also establish a committee to facilitate consultation and communications between the parties. The committee can be responsible for communicating updates on the project, sharing opportunities for Indigenous members and Indigenous businesses, and responding to community concerns.

In the Predator – Kaska Exploration MOU, specific instances of consultation were required, such as prior to submission of permits. However, the exploration agreement expressly says "nothing in the MOU shall restrict Predator from asserting that this MOU is evidence of consultation and accommodation by Predator."

Ownership / Joint Venture

As described earlier, exploration agreements can allow for the issuance of equity to Indigenous groups in the form of shares or warrants as a form of payment. However, exploration agreements typically include a clause to expressly note that nothing in the agreement creates a partnership or joint venture relationship between the parties.

Some exploration agreements provide for the possibility of a joint venture agreement to be entered into at a later time.

Confidentiality

There is typically a confidentiality clause in an exploration agreement so that all information, records or documents exchanged between the parties during the negotiation of the exploration agreement that are not available through public means will remain confidential. The agreement can also allow for each party to have the right to disclose the existence of the agreement and the nature of the matters dealt with in the agreement. In addition, the parties will covenant to only use the confidential information for the purposes contemplated or permitted by the

agreement and for no other purpose. It is also common for the proponent under the exploration agreement to be required to share exploration results with the Indigenous group, subject to its obligations under any confidentiality agreements.

Under the Predator – Kaska Exploration MOU, Predator is to provide exploration results to Kaska which will be subject to the terms of a the confidentiality agreement entered into between the parties. There is a confidentiality provision in the exploration agreement regarding future confidential information that may be provided to Kaska for negotiations of an IBA. The exploration agreement also says that the entering and existence of the exploration agreement can be disclosed freely but the parties are to keep the provisions, terms and conditions of the exploration agreement confidential unless required to be disclosed by law, compliance with securities regulations or accounting requirements or on consent of the parties.

Dispute Resolution

The dispute resolution mechanisms in an exploration agreement are generally not as comprehensive as what is provided under an impact benefit agreement. Instead of providing for mediation and arbitration, the dispute resolution section in exploration agreements generally will require the parties to negotiate to resolve the issue. If the matter cannot be resolved between operational staff, the Chief and the President or CEO of the proponent will meet to discuss the dispute and attempt to resolve it. There are exploration agreements that will provide for the matter to continue onto mediation and some exploration agreements will put arbitration as an avenue that can be pursued under an exploration agreement if there is a dispute.

The Predator – Kaska Exploration MOU sets out the dispute resolution process to be taken if the parties are in dispute. The parties are to first negotiate a resolution to the dispute. In the event that the parties fail to resolve the dispute, they may jointly nominate a neutral third party to fact-find and make recommendations to assist them in resolving the dispute or may jointly refer the dispute to formal mediation. Failing to come to a resolution through mediation, the parties may then submit the dispute to arbitration. The costs of arbitration shall be borne by the parties as may be specified in such determination.

Negotiation Costs

Exploration agreements typically include a clause where in the event that negotiations are entered into pursuant to the exploration agreement, the proponent will cover the reasonable costs of the Indigenous group. Negotiation costs covered by an exploration agreement may include general costs relating to ongoing engagement throughout the exploration phase, or negotiation of an IBA , joint ownership structure, or other instrument intended to further the development of a mine.

Under most provisions, a budget will be developed and costs related to reasonable legal, financial and other professional and consulting fees and expenses, community consultation costs, including community consultation personnel, material development, translation and distribution, meeting, technical expertise and reasonable travel, administrative and other costs will typically be included. Negotiations costs are different from lump sum or milestone payments

as they are typically tied expressly to costs, and are only paid once evidence of negotiation costs are provided.

The costs covered for the negotiation of an exploration agreement is approximately \$ [REDACTED]. Approximately \$ [REDACTED] will be used towards any archaeological or ethnographic research, \$ [REDACTED] will be used for consultation and \$ [REDACTED] for the actual negotiation expenses.

The Predator – Kaska Exploration MOU provides that Predator will cover Kaska's reasonable costs for the consultations respecting the exploration activities. In addition, exploration agreement provides that prior to negotiating the IBA, Kaska will provide a negotiation budget, to which Predator will cover the reasonable costs set out in the negotiation budget. The parties also to agree to work diligently and cooperatively to maximize government funding to support the costs of the Socio Economic Participation Agreement ("SEPA") negotiations. SEPA is another name for IBA.

Termination and Renegotiation

Exploration agreements can typically be terminated by either party, and may terminate at a set time or after certain exploration work is complete. The parties can undertake to negotiate for further exploration activities or work subsequent to the defined scope outlined in the exploration agreement. There is usually a good faith negotiation requirement for the purposes of negotiating an advanced exploration agreement.

The exploration agreement can also require that an impact benefit agreement (IBA) is entered into before development can proceed. To address future potential conflict, the exploration agreement can provide that should the parties be unable to negotiate a suitable IBA, they can utilize the dispute resolution mechanism that is agreed upon in the exploration agreement. The parties can also set out the topics to be negotiated under an IBA in an exploration agreement.

The Predator – Kaska Exploration MOU is an example where the parties commit to developing an IBA in the exploration agreement. The exploration agreement also sets out a comprehensive framework on the protocol the parties are to adhere to when negotiating the IBA.