

**AGREEMENT CONCERNING THE TROILUS EXTERNAL FEDERAL ASSESSMENT PROCESS  
UNDER THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT  
AND THE IMPACT ASSESSMENT ACT**

**BETWEEN:** **CREE NATION GOVERNMENT**, a legal person established in the public interest pursuant to Section 11 of the *James Bay and Northern Quebec Agreement* and the *Act respecting the Cree Nation Government* (Quebec), represented by its Chairperson, Grand Chief Mandy Gull-Masty;

("Cree Nation Government")

**AND:** **MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE**, the Honourable Steven Guilbault;

("Minister")

**AND:** **IMPACT ASSESSMENT AGENCY OF CANADA**, represented by its President, Terence Hubbard;

("Agency")

(hereinafter, together the "**Parties**", and separately a "**Party**")

**WHEREAS** on November 11, 1975, the Grand Council of the Crees (of Québec), the Northern Québec Inuit Association, the Government of Québec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydroélectrique de Québec (Hydro-Québec) and the Government of Canada entered into the *James Bay and Northern Québec Agreement* ("**JBNQA**"), a treaty constitutionally recognized and affirmed in section 35 of the *Constitution Act, 1982*;

**WHEREAS** Section 22 of the JBNQA, entitled *Environment and Future Development below the 55th Parallel*, sets out an environmental and social protection regime that provides for, among other things,

- an environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the Native people and the wildlife resources of the Territory as defined in Section 22 ("**Territory**");
- a special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the JBNQA;

- the protection of the rights and guarantees of the Cree people established by and in accordance with Section 24 of the JBNQA;
- the protection of the Cree people, their economies and the wildlife resources upon which they depend;

**WHEREAS** paragraph 22.2.3 of the JBNQA provides that all federal laws of general application respecting environmental and social protection apply in the Territory insofar as they are not inconsistent with the provisions of the JBNQA and, in particular, those of Section 22;

**WHEREAS** paragraph 22.7.5 of the JBNQA provides:

“22.7.5 Nothing in the present Section shall be construed as imposing an impact assessment review procedure by the Federal Government unless required by Federal law or regulation. However, this shall not operate to preclude Federal requirement for an additional Federal impact review process as a condition of Federal funding of any development project.”

**WHEREAS** the federal process contemplated by paragraph 22.7.5 of the JBNQA constitutes an “external federal process”;

**WHEREAS** the Supreme Court of Canada stated in *Québec (Attorney General) v. Moses* (“**Moses Decision**”) that common sense as well as legal requirements suggest that external federal processes in the Territory will be structured to accommodate the special context of a project proposal in the Territory, including the participation of the Cree<sup>1</sup>;

**WHEREAS** the Cree Nation Government, the Agency, and Crown-Indigenous Relations and Northern Affairs Canada concluded a Memorandum of Understanding, on February 22, 2022, committing to co-develop one or more mutually agreed upon proposals to amend Section 22 of the JBNQA and complementary measures in order to ensure Cree participation in external federal processes for projects in the Territory, while complying with the spirit and objectives of the JBNQA and the requirements of the *Impact Assessment Act* (“**IAA**”) (“**MOU**”); the intended outcome of this MOU is to concurrently seek a mandate from the respective Parties’ authorities to negotiate and/or conclude an agreement to give effect to such mutually agreed upon amendment proposal and complementary measures;

**WHEREAS** Troilus Gold Corporation (“**Proponent**”) proposes to carry out the Troilus Gold Mine Project, as described in the description submitted by the Proponent and set out in Schedule A (the “**Project**”);

**WHEREAS** the IAA came into force on August 28, 2019 and applies to “designated projects”, as defined under section 2 of the IAA, carried out in the Territory;

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<sup>1</sup> [2010] 1 SCR 557, par. 48.

**WHEREAS** the Agency determined on November 21, 2021 that the Project is a "designated project" under the IAA as it includes one or more proposed physical activities listed in the *Physical Activities Regulations*, and therefore the Project may be required to undergo a federal impact assessment;

**WHEREAS** all new major mining operations excluding explorations are developments subject to assessment under Section 22 of the JBNQA;

**WHEREAS** the Project is therefore subject to the Provincial environmental and social impact assessment and review procedure stipulated in Section 22 of the JBNQA;

**WHEREAS** the Agency is responsible for ensuring that the federal impact assessment of the Project is carried out in accordance with

- (a) the requirements of the IAA and of the Moses Decision;
- (b) the Crown's legal duty to consult under s. 35 of the *Constitution Act, 1982* and the Honour of the Crown;
- (c) the objectives of the *United Nations Declaration on the Rights of Indigenous Peoples*;

**WHEREAS** section 29 of the IAA authorizes the Agency to delegate any part of the impact assessment and the preparation of the assessment report;

**WHEREAS** the Agency has not determined whether an impact assessment of the Project is required under the IAA;

**WHEREAS**, in January 2022, the Cree Nation Government advised the Agency of its desire to jointly lead with the Agency the federal impact assessment process applicable to the Project;

**WHEREAS**, in response, the Agency and the Cree Nation Government entered into negotiations in respect of this Agreement;

**WHEREAS** this Agreement establishes a framework for the Parties to collaborate on the application of the impact assessment process under the IAA to the Project ("**Troilus external federal process**");

**WHEREAS** it is appropriate to collaborate to the extent possible with the provincial Environmental and Social Impact Review Committee ("**COMEX**") responsible for the assessment and review of the Project under Section 22 of the JBNQA in order to ensure efficiency and avoid duplication;

**WHEREAS**, in parallel with the project-specific process contemplated in this Agreement, the Cree Nation Government and the Agency intend to pursue their discussions pursuant to the MOU;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**I. PRINCIPLES**

1. The Troilus external federal process will be carried out in accordance with the requirements of the IAA in a manner that:
  - (a) respects the spirit and objectives of the JBNQA in particular, Sections 22 and 24;
  - (b) provides for the special, collaborative participation of the Cree people; and
  - (c) takes into account the special context of project proposals in the Territory.
2. For clarity, the Troilus external federal process includes the pre-planning, planning, Impact Statement, Impact Assessment, and Post Decision Statement phases, certain aspects and deliverables of which are set out in **Schedule B**.
3. Subject to Part V of this Agreement, the Troilus external federal process outlined in this Agreement excludes the public interest decision-making process mentioned in Phase 5 of **Schedule B**.

**II. JOINT COMMITTEE**

4. The Parties shall establish a Joint Committee that will perform the functions outlined in this Agreement that are required to carry out the Troilus external federal process.
5. The Joint Committee shall be composed of two representatives appointed by the Agency and two representatives appointed by the Cree Nation Government.
6. One representative appointed by the Agency and one representative appointed by the Cree Nation Government shall serve as Co-Chairs of the Joint Committee.
7. The Agency shall provide the Joint Committee with logistical and secretarial support as required to carry out its functions under this Agreement.

**III. FUNCTIONS OF JOINT COMMITTEE**

8. With respect to the Troilus external federal process, the Joint Committee shall be responsible for:
  - (a) Carrying out all aspects of the impact assessment;
  - (b) Identifying, in consultation with the Impacted Cree First Nations, as defined in **Schedule B**, the key documents or summary key documents to be made available in Cree and English or French;
  - (c) Carrying out the actions and deliverables for Phases 1, 2, 3, 4 and 6 of the Troilus external federal process identified in **Schedule B**;

- (d) Carrying out, as part of the Troilus external federal process, certain procedural aspects of Crown consultations in accordance with **Schedule C**;
  - (e) Preparing, by consensus to the extent possible, the documents relevant to the carrying out of the Troilus external federal process, such as the impact assessment report, including proposed conditions, summaries of First Nations' and public comments, and recommendations, rationale and conclusions;
  - (f) Submitting the final impact assessment report to the Minister.
9. The activities and deliverables outlined in the work plan in **Schedule B** may be amended by the Joint Committee, subject to the scope of its functions set out in section 8.
10. The Troilus external federal process shall take into account at least the factors and elements required under the IAA as well as by Section 22 of the JBNQA, including the purposes, alternatives, environmental impacts and social impacts of the Project.

#### **IV. SUBSTITUTION, REVIEW PANEL**

11. Nothing in this Agreement fetters or limits the Minister's authority, where an impact assessment of the Project is required under the IAA, to substitute another process under section 31 of the IAA for the impact assessment, or to refer the impact assessment to a review panel under section 36 of the IAA.
12. A substitution under section 31 of the IAA of another process for the impact assessment is subject to the mutual agreement of the Parties and of Quebec.
13. Where the Minister refers the impact assessment to a review panel under section 36 of the IAA, the Agency shall appoint the Cree members of the Joint Committee as members of the review panel.

#### **V. PUBLIC INTEREST DETERMINATION**

14. The Minister shall consider the following when determining whether the adverse effects within federal jurisdiction and the adverse direct or incidental effects are, in light of the factors referred to in the IAA and the extent to which those effects are significant, in the public interest – or when referring this determination to the Governor in Council:
- (a) the impact assessment report, including the proposed potential conditions and recommended conclusions;
  - (b) the views of the Cree Nation Government and the Impacted Cree First Nations; and
  - (c) the implementation of any mitigation measures to address such effects, having regard to items (a) and (b).

15. If the Joint Committee members cannot agree on the recommended conclusions as to the extent of the adverse effects within federal jurisdiction and the adverse direct or incidental effects and the extent to which those effects are significant, the Joint Committee shall meet with the President of the Agency and the Executive Director of the Cree Nation Government with a view to seeking consensus before finalizing the impact assessment report.
16. If the Joint Committee members are unable to reach consensus, they shall ensure that any non-consensus views are clearly and fairly articulated in decision materials submitted to the Minister.
17. The Minister shall provide the Cree Nation Government with written reasons for the determination made under either subsection 60(1) or section 62 of the IAA, including, if applicable, an explanation as to why certain views of the Cree Nation Government cannot be accommodated.

#### **VI. COLLABORATION WITH QUÉBEC**

18. The Parties shall make best efforts to collaborate to the extent possible with the COMEX responsible for the provincial environmental and social impact assessment and review of the Project under Section 22 of the JBNQA in order to ensure efficiency and avoid duplication.

#### **VII. FUNDING**

19. The Agency shall provide funding, up to the maximum funding available according to the Participant Funding Program as provided for at the time of this agreement or subsequently, if the maximum amount is greater, to the Cree Nation Government in order to facilitate its participation in the functions of the Joint Committee established under this Agreement. This funding shall be in addition to that provided to the Impacted Cree First Nations and other interested Cree interveners to participate in the Troilus external federal process.
20. The level and timing of disbursement of contribution funding for the impact statement and assessment phases can be revised upon request.

#### **VIII. TIME LIMITS**

21. The Parties shall make all reasonable efforts, subject to receipt of adequate resources:
  - (a) to carry out all activities under this Agreement within the time limits established under the IAA for the Troilus external federal process;
  - (b) to ensure, to the extent possible, that all consultations with the Impacted Cree First Nations are conducted at appropriate times, outside of culturally valued periods, according to a calendar to be established with the Impacted Cree First Nations, and that time limits are adjusted or extended accordingly; and

- (c) to align activities, to the extent possible, with the time limits of the provincial environmental and social impact assessment and review processes carried out under Section 22 of the JBNQA.

**IX. WITHOUT PREJUDICE**

- 22. This Agreement and the Troilus external federal process carried out in accordance with this Agreement are without prejudice to, without admission in regard to, and under reserve of the respective rights, claims and positions of the Parties concerning the scope or application of any external federal process for any other project.
- 23. This Agreement applies only to the Project and may not be raised as a precedent or admission in the courts or elsewhere in regard to any other project.

**X. PREAMBLE**

- 24. The preamble forms an integral part of this Agreement.

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UNDER THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*  
AND THE *IMPACT ASSESSMENT ACT*

**AND THE PARTIES HAVE SIGNED:**

**MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE**

<Original signed by>

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Honourable Steven Guilbeault

Date: • May 19, 2022

**IMPACT ASSESSMENT AGENCY OF CANADA**

<Original signed by>

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Per: Terence Hubbard, President

Date: • May 17, 2022

**CREE NATION GOVERNMENT**

<Original signed by>

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Per: Grand Chief Mandy Gull-Masty, Chairperson

Date: • *May 17, 2022*



## **SCHEDULE A**

### **DESCRIPTION OF TROILUS GOLD MINE**

#### **OVERVIEW OF PROPOSAL**

Troilus Gold Corporation is proposing to develop the Troilus deposit, a gold mine project targeting an average production rate of 20,000 to 40,000 tonnes of ore per day and an average processing capacity from 20,000 to 35,000 tonnes per day. The project is located about 150 kilometers north of Chibougamau, on the Eeyou Istchee-James Bay territory, more precisely on the traditional lands of the Impacted Cree First Nations. The life of the project is estimated at 22 years.

**SCHEDULE B**

**WORKPLAN OVERVIEW FOR TROILUS EXTERNAL FEDERAL PROCESS**

The Troilus Gold Mine Project is currently at the preplanning phase. There are no legislated timelines for this phase under the IAA.

As of the date of signature of this Agreement, the term “**Impacted Cree First Nations**” only includes the Cree Nation of Mistissini. However, should the Joint Committee determine, during the implementation of this Agreement, that other Cree First Nations should be also considered as Impacted Cree First Nations, the Joint Committee shall set out such determination in writing.

Step	Estimated duration	Joint Committee Actions and Deliverables	Consultation action
Phase 1: Preplanning		Provide comments to the Agency on draft and final initial project description to ensure it meets the requirements of the <i>Information and Management of Time Limits Regulations</i> (the Regulations)	1) Contact the Impacted Cree First Nations to notify them that a potential project is being contemplated that may affect their rights or interests, and invite their participation in the planning phase
Phase 2: Planning	180 days	1) Provide comments to the Agency on Summary of Issues that includes issues raised by provincial and territorial jurisdictions and the Impacted Cree First Nations, the public, federal authorities and other participants during consultations and engagement  2) Work with the Agency to provide the Summary of Issues to the proponent  3) Provide comments to the Agency on the draft and final detailed project description and the Response to the Summary of Issues to ensure conformity with the Regulations  4) Provide input into the Agency's decision of whether an impact assessment is required	1) Initiate engagement and consultation activities with the Impacted Cree First Nations, as well as the public and other participants, on the Initial Project Description  2) If an impact assessment is required, continue to engage with the Impacted Cree First Nations, the public, other jurisdictions, and federal expert departments in order to develop the Public Participation Plan, the Indigenous Engagement and Partnership Plan, the Impact Assessment Cooperation Plan, the Permitting Plan and the Tailored Impact Statement Guidelines

		5) Issue the notice of commencement of the impact assessment and the supporting documents referred to under paragraph 18(1)(b) of the IAA, including the draft and final Public Participation Plan, the Indigenous Engagement and Partnership Plan, the Impact Assessment Cooperation Plan, the Permitting Plan and the Tailored Impact Statement Guidelines.	
Phase 3: Impact Statement	Up to three years	1) Review the Proponent's draft and final Impact Statement to determine if it conforms with the Tailored Impact Statement Guidelines	1) Continue to engage with stakeholders in order to prepare the Impacted Cree First Nations and the public for the impact assessment phase  2) Invite comments on the Impact Statement and engage with federal authorities, lifecycle regulators, the Impacted Cree First Nations, other jurisdictions and members of the public to ensure all information and studies outlined in the Guidelines are included in the Proponent's Impact Statement
Phase 4: Impact Assessment	300 days	Carrying out all aspects of the impact assessment including:  1) Offer to consult and cooperate with the Province of Quebec for the conduct of the impact assessment and implement the Impact Assessment Cooperation Plan.  2) Continue the analysis on the Impact Statement and consider comments received  3) Engage with the Proponent as needed to seek clarifications, resolve issues or to ask questions on the Impact Statement  4) If required, initiate an External Technical Review,	1) Continue to consult the Impacted Cree First Nations and implement the Indigenous Engagement and Partnership Plan developed in the planning phase  2) Continue to engage the public and implement the Public Engagement Plan developed in the planning phase  3) Where needed, hold public meetings or open houses to allow the Impacted Cree First Nations, stakeholders and the public to participate in the impact assessment process  4) Consult the Impacted Cree First Nations on the consultation report  5) Seek views of the Stakeholders on the draft Impact Assessment

		<p>consisting of select independent experts and develop technical questions to pose to the experts</p> <p>5) Develop the draft and final Impact Assessment Report, considering the information and evidence provided by the Proponent, expert federal departments, the Impacted Cree First Nations, the public and other jurisdictions, including provincial jurisdictions</p> <p>6) Prepare draft conditions</p> <p>7) Submit final report to the Minister</p> <p>8) Develop a consultation report</p>	<p>Report and draft potential conditions</p>
<p><b>Phase 5: Decision-Making</b>  <b>30 days are left at the end of the timeline for the Minister's Decision</b>  <b>See Part V of the Agreement</b></p>			
<p>Phase 6: Post-Decision</p>		<p>1) The Joint Committee participates in the Agency's review of the Proponent's proposed follow-up programs and monitoring results and provides feedback. As required based on the evaluation of the monitoring of results, the Joint Committee may comment on the Agency's proposed recommendations for improvements or propose their own for consideration.</p> <p>2) The Joint Committee participates in any process to consider amending the decision statement.</p>	<p>1) The Joint Committee consults impacted Cree First Nations on the proposed follow-up programs, monitoring results and proposed recommendations for improvement.</p> <p>2) The Joint Committee consults the impacted Cree First Nation on any proposed amendments to the decision statement conditions.</p>

## **SCHEDULE C**

### **DELEGATION OF CERTAIN PROCEDURAL ASPECTS OF CROWN CONSULTATION**

1. The Parties acknowledge that, notwithstanding the delegation of certain procedural aspects of consultation, Canada retains the responsibility to ensure that the duty to consult has been satisfied, including determining the scope, content and adequacy of consultation.
2. The Joint Committee will:
  - a. Organize and hold public hearings with the Impacted Cree First Nations in a manner similar to the public hearings normally conducted by COFEX and COMEX; and
  - b. Provide documentation to inform decision-making in respect of the Project, which should include:
    - i. The impact assessment report;
    - ii. A separate report that summarizes what consultations occurred, what was learned and what was addressed with the Impacted Cree First Nations; and
    - iii. Correspondence setting out the views of the Impacted Cree First Nations in respect of the Project;
  - c. Allow for meaningful consultations and, ensure, to the extent possible, that all consultations with the Impacted Cree First Nations are conducted at appropriate times, outside culturally valued periods, according to a calendar to be agreed with the Impacted Cree First Nations.

The Joint Committee and the Agency will discuss:

- a. Crown consultations with a view to ensuring adequate implementation thereof; and
- b. Issues raised during Crown consultations and proposed accommodations.