

**INVESTOR RIGHTS AGREEMENT**

**BETWEEN:**

**GOLDCORP INC.**

**- AND -**

**ORLA MINING LTD.**

**November 7, 2017**

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**INVESTOR RIGHTS AGREEMENT**

**THIS AGREEMENT** is made as of the 7<sup>th</sup> day of November, 2017,

**BETWEEN:**

**GOLDCORP INC.**, a corporation existing under the laws of the Province of Ontario

(the “**Investor**”)

- and –

**ORLA MINING LTD.**, a corporation existing under the laws of Canada

(the “**Company**”)

**RECITALS:**

- A. The Company and the Investor have entered into an asset purchase agreement dated June 20, 2017 (the “**Asset Purchase Agreement**”) pursuant to which the Investor will acquire, as partial consideration for the transfer of certain assets of a subsidiary of the Investor to, or as directed by, the Company, an aggregate of 31,860,141 Common Shares representing 19.9% of the Company’s issued and outstanding Common Shares.
- B. In consideration of the Investor’s agreement to enter into, and complete the transactions contemplated by the Asset Purchase Agreement, the Company has agreed to grant the Investor certain additional rights as set out herein, subject to the Investor assuming certain obligations, as set out herein.

**NOW THEREFORE**, in consideration of the foregoing and the representations, warranties, covenants, conditions, agreements and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties to this Agreement, the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

Throughout this Agreement, except as otherwise expressly provided, the following words, terms and expressions shall have the following meanings:

“**Act**” means the *Canada Business Corporations Act*.

“**Affiliate**” has the meaning ascribed to such term in the Act, as in effect on the date of this Agreement.

“**Agent**” and “**Agents**” shall have the meanings set out in Section 5.2(a).

“**Agreement**”, “**this Agreement**”, “**the Agreement**”, “**hereof**”, “**herein**”, “**hereto**”, “**hereby**”, “**hereunder**” and similar expressions mean this investor rights agreement dated November 7, 2017 between the Parties, including all instruments supplementing, amending, modifying, restating or otherwise confirming this Agreement. All references to “**Articles**”, “**Sections**” and “**Schedules**” mean and refer to the specified article, section, schedule and exhibit of this Agreement.

“**Applicable Laws**” means with respect to any person, any domestic, foreign, federal, provincial, state, county or municipal or local law, rule or regulation, including any statute, regulation, rule or subordinate legislation or treaty or common law and any rule, decree, policy or enactment of any Governmental Authority that is binding or applicable to such Person.

“**Asset Purchase Agreement**” has the meaning set out in the recitals hereto.

“**Board**” means the board of directors of the Company, as constituted from time to time.

“**Bought Deal**” means a fully underwritten offering on a bought deal basis pursuant to which an underwriter has committed to purchase securities of the Company pursuant to a “bought deal” letter prior to the filing of a preliminary prospectus or prospectus supplement or a distribution pursuant to an overnight marketed offering.

“**Business Day**” means any day which is not a Saturday, a Sunday or a day observed as a statutory or civic holiday under the laws of the Province of British Columbia or Ontario or the federal laws of Canada applicable in the Province of British Columbia or Ontario on which the principal commercial banks in the City of Vancouver, British Columbia or City of Toronto, Ontario, are open for business.

“**Camino Rojo Project**” means the Company’s mining concessions and rights as described in Exhibit A.

“**Cerro Quema Project**” means the Company’s rights to develop a mining project in the Republic of Panama pursuant to the rights granted under the three concession contracts between the Purchaser and the Government of Panama.

“**Common Shares**” means the common shares in the capital of the Company issued and outstanding from time to time.

“**Confidential Information**” shall have the meaning set out in Section 5.2(a).

“**Consents**” means all consents, approvals, permits, licences, waivers of rights of first refusal or waivers of due on sale clauses or other waivers, as applicable, from: (a) any party to any contract, and (b) any Governmental Authority necessary in connection with the execution of this Agreement or the performance of any terms thereof or any document delivered pursuant thereto or the completion of any of the transactions contemplated by this Agreement.

**“Constating Documents”** means, with respect to any Person, its articles or certificate of incorporation, amendment, amalgamation or continuance, memorandum and articles of association, letters patent, supplementary letters patent, by-laws, partnership agreement, limited liability Corporation or social agreement or other similar document, and all unanimous shareholder agreements, other shareholder agreements, voting trusts, pooling and/or syndicated agreements and similar contracts, arrangements and understandings applicable to the Person’s securities, all as amended, supplemented, restated and replaced from time to time.

**“Convertible Security Credit”** means 3,251,874 being 19.9% of the total number of Common Shares issuable upon exercise of all convertible securities outstanding as of the date hereof.

**“Director Eligibility Criteria”** shall have the meaning set out in Section 4.1(b).

**“Distribution”** means a distribution or sale of Common Shares by the Company to the public by means of a prospectus under Securities Laws.

**“Exchange”** means the TSX-V or such other stock exchange where the Common Shares are listed from time to time.

**“Exempt Offering”** shall have the meaning set out in Section 2.7.

**“Exercise Notice”** shall have the meaning set out in Section 2.3.

**“Governmental Authority”** means any (a) multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, bureau or agency, domestic or foreign, (b) subdivision, agent, commission, board, or authority of any of the foregoing, or (c) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, including any stock exchange or self-regulatory authority and, for greater certainty, the Securities Regulatory Authorities and the TSX-V or any other Exchange as applicable.

**“Investor Nominee”** shall have the meaning set out in Section 4.1(a).

**“Notice”** shall have the meaning set out in Section 11.4.

**“Notice Period”** shall have the meaning set out in Section 2.3.

**“Offering”** shall have the meaning set out in Section 2.1.

**“Offering Notice”** shall have the meaning set out in Section 2.1.

**“Participating Percentage”** means, initially, 19.9%, subject to adjustment pursuant to Section 2.5.

**“Participation Right”** shall have the meaning set out in Section 2.2.

**“Parties”** means the parties to this Agreement and “Party” means one of them.

“**Person**” means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, company, corporation or other body corporate, union, Governmental Authority and a natural person in his capacity as trustee, executor, administrator, or other legal representative.

“**Piggyback Registration**” shall have the meaning set out in Section 8.1(a).

“**Projects**” means the Cerro Quema Project and the Camino Rojo Project.

“**Registration Expenses**” means all out of pocket expenses incident to the parties’ performance of or compliance with this Agreement in connection with a Distribution, including all registration and filing fees, all fees and expenses of complying with Securities Laws, all printing expenses, all internal expenses, all “road show” and marketing expenses, all listing fees, all registrar and transfer agent fees, the fees and disbursements of counsel for the Company and the Company’s independent public accountants, including the expenses of any special audits and/or comfort letters required by or incidental to such performance and compliance, but excluding Selling Expenses.

“**Reporting Jurisdictions**” means British Columbia, Alberta, Ontario and Quebec.

“**Sale Notice**” shall have the meaning set out in Section 3.2(a).

“**Sale Response Period**” shall have the meaning set out in Section 3.2(a).

“**Sale Shares**” shall have the meaning set out in Section 3.2(a).

“**Securities**” any equity or voting securities, or securities convertible into or exchangeable for equity or voting securities, of the Company, including, for greater certainty, Common Shares.

“**Securities Laws**” means the applicable securities legislation of the Canadian provinces.

“**Securities Regulatory Authorities**” means the securities regulatory authority of each of the Reporting Jurisdictions, and any Exchange.

“**Selling Expenses**” means all underwriting commissions, discounts or brokers’ commissions incurred in connection with a Distribution.

“**Shareholders**” means the holders of Common Shares.

“**Specified Indemnified Party**” shall have the meaning set out in Section 8.6(b).

“**Specified Indemnifying Party**” shall have the meaning set out in Section 8.6(b).

“**TSX-V**” means the TSX Venture Exchange.

## **1.2 Certain Rules of Interpretation**

In this Agreement:

- (a) **Time** - Time is of the essence in and of this Agreement.
- (b) **Calculation of Time** - Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends. Where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end.
- (c) **Business Days** - Whenever any action to be taken or payment to be made pursuant to this Agreement would otherwise be required to be made on a day that is not a Business Day, such action shall be taken or such payment shall be made on the first Business Day following such day.
- (d) **Currency** - Unless otherwise specified, all references to amounts of money in this Agreement refer to the lawful currency of the Canada.
- (e) **Headings** - The descriptive headings preceding Articles and Sections of this Agreement are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content of such Articles or Sections. The division of this Agreement into Articles and Sections shall not affect the interpretation of this Agreement.
- (f) **Including** - Where the word “including” or “includes” is used in this Agreement, it means “including without limitation” or “includes without limitation”.
- (g) **Plurals and Gender** - The use of words in the singular or plural, or referring to a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to such persons or circumstances as the context otherwise permits.
- (h) **Statutory References** - Any reference to a statute shall mean the statute in force as at the date of this Agreement (together with all regulations promulgated thereunder), as the same may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute thereto, unless otherwise expressly provided.
- (i) **Ordinary Course** - Any reference to an action taken by a Person in the ordinary course means that such action is consistent with past practices of such Person and is taken in the ordinary course of the normal operations of such Person.
- (j) **Percentages** - All references to a percentage ownership of shares shall be calculated on a non-diluted basis, unless otherwise indicated.

### 1.3 Entire Agreement

- (a) This Agreement and the Asset Purchase Agreement constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and

supersede all prior agreements, understandings, negotiations and discussions, whether oral, written or otherwise, of the Parties. There are no representations, warranties, covenants or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Asset Purchase Agreement and any document delivered pursuant to this Agreement.

- (b) No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

#### **1.4 Governing Law and Jurisdiction**

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the courts of British Columbia, judicial district of Vancouver, in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in such court or any argument that such court provides an inconvenient forum.

#### **1.5 Knowledge**

Whenever representations and warranties the Seller are qualified by knowledge, this means the actual knowledge of Joseph Dick and Mauricio Alvarez after reasonable enquiry. Whenever representations and warranties of Purchaser and Orla are qualified by knowledge, this means the actual knowledge of Marc Prefontaine, Hans Smit and Paul Robertson, after reasonable enquiry.

### **ARTICLE 2 PARTICIPATION RIGHT**

#### **2.1 Notice of Offerings**

- (a) Subject to Section 2.6, if the Company proposes to issue any Securities pursuant to a public offering, a private placement or otherwise at any time after the date hereof (an “**Offering**”), the Company will, as soon as possible after the public announcement of the Offering, but in any event not later than seven Business Days prior to the expected completion date of the Offering, give written notice of the Offering (the “**Offering Notice**”) to the Investor including, to the extent known by the Company, full particulars of the Offering, including the number of Securities, the rights, privileges, restrictions, terms and conditions of the Securities, the price per Security to be issued under the Offering, the expected use of proceeds of the Offering and the expected closing date of the Offering. The Offering Notice shall also include copies of any investor presentation, prospectus or offering memorandum or similar disclosure document, subscription agreement and other materials delivered by or proposed to be delivered by the Company (or by any

agent or investment dealer acting on behalf of the Company) to potential subscribers under the Offering.

## 2.2 Grant of Participation Right

- (a) The Company agrees that, subject to Section 2.6, the Investor (directly or through an Affiliate) has the right (the “**Participation Right**”), to subscribe for and to be issued as part of an Offering at the subscription price per Security pursuant to the Offering and otherwise on substantially the terms and conditions of the Offering (provided that, if the Investor is prohibited by Securities Laws or other Applicable Laws from participating on substantially the terms and conditions of the Offering, the Company shall use commercially reasonable efforts to enable the Investor to participate on terms and conditions that are as substantially similar as circumstances permit):
- (i) in the case of an Offering of Common Shares, up to such number of Common Shares that will allow the Investor to maintain a percentage ownership interest in the Common Shares equal to its then Participating Percentage; and
  - (ii) in the case of an Offering of Securities (other than Common Shares), up to such number of Securities that will (after giving effect to the Offering and assuming conversion, exercise or exchange of all of the convertible, exercisable or exchangeable Securities issued in connection with the Offering and issuable pursuant to this Section 2.2) allow the Investor to maintain, a percentage ownership interest in the Common Shares equal to its then Participating Percentage.
- (b) If, upon the exercise by the Investor of its Participation Right, the Investor becomes entitled to a fractional interest in Securities, any such fractional Security that is (i) less than 0.5 of an Security will be rounded down to the nearest whole Security, and (ii) 0.5, or greater, of a Security will be rounded up to the nearest whole Security provided in no circumstances shall such rounding up result in the Investor holding more than 19.99% of the issued and outstanding Common Shares.

## 2.3 Exercise Notice

If the Investor wishes to exercise the Participation Right, the Investor shall give written notice to the Company (the “**Exercise Notice**”) of its intention to exercise such right and of the number of Securities the Investor wishes to purchase, and shall subscribe to the Offering within five Business Days after the date of receipt of an Offering Notice, or in the case of a Bought Deal, within two Business Days of receipt of an Offering Notice (the “**Notice Period**”), failing which the Investor will not be entitled to exercise the Participation Right in respect of such Offering.

## 2.4 Offering of Participation Right Securities

- (a) If the Company receives an Exercise Notice from the Investor within the Notice Period, then the Company shall:

- (i) subject to the receipt and continued effectiveness of all required approvals (including the approval(s) of the Exchange and any required approvals under Securities Laws and any required shareholder approval), which approvals the Company shall use all commercially reasonable efforts to obtain (including by applying for any necessary price protection confirmations, seeking shareholder approval (if required) in the manner described below, and using its commercially reasonable efforts to cause management and each member of the Board to vote their Common Shares and any shares of the Company entitled to vote on the matter and all votes received by proxy in favour of the Offering of the Securities to the Investor); and
- (ii) subject to the completion of the relevant Offering,

issue to the Investor or its nominee, against payment of the subscription price payable in respect thereof, that number of Securities, as applicable, set forth in the Exercise Notice. The parties agree that the Offering of any Securities to the Investor pursuant to this Section 2.4 shall occur concurrently with the completion of the relevant Offering.

- (b) If the Company is required by the Exchange or otherwise to seek shareholder approval for the Offering of the Securities to the Investor or its nominee, then the Company may, in its sole discretion, (i) determine to terminate the Offering, or (ii) call and hold a meeting of its shareholders to consider the Offering of the Securities to the Investor as soon as reasonably practicable, in which case the Company shall recommend approval of the Offering of the Securities and shall solicit proxies in support thereof.

## **2.5 Reduction of Participating Percentage**

If the Investor elects not to exercise the Participation Right, in whole or in part, in respect of an Offering of Common Shares, the Participating Percentage shall be reduced to be the amount equal to the percentage determined by dividing (a) the number of Common Shares then held by the Investor and its Affiliates plus the Convertible Security Credit plus the number of Common Shares issuable upon exercise of securities convertible into or otherwise exchangeable for equity or voting securities of the Company then held by the Investor by (b) the total number of issued and outstanding Common Shares plus the number of Common Shares issuable upon exercise of securities convertible into or otherwise exchangeable for equity or voting securities of the Company issued and outstanding following completion of such Offering.

## **2.6 Non-Cash Consideration**

If the Securities are to be issued for consideration other than cash consideration, the consideration payable by the Investor upon exercise of its Participation Right shall be the cash equivalent of the fair market value of the non-cash consideration to be paid by other acquirors of Securities as determined by the Board, in its sole discretion, acting reasonably and with the advice of its financial advisors.

## 2.7 Offerings Not Subject to Participation Rights

Notwithstanding the foregoing, the Participation Right will only apply to an Offering for which the Company anticipates that the majority of the net proceeds of the Offering are to be applied for the purposes of the advancement of the Projects (any other Offering being, an “**Exempt Offering**”), *provided however* should the Company in fact apply a majority of the net proceeds of any Exempt Offering to the advancement of the Projects, the Investor shall have the right to purchase an amount of Securities at the time of the next Offering sufficient to increase its percentage holding of Securities to the Participating Percentage in effect immediately prior to the completion of the such Exempt Offering at a price per Security equal to the price under such Exempt Offering.

## ARTICLE 3 INVESTOR OBLIGATIONS

### 3.1 No Sale or Pledge of Securities by the Investor

Subject to Section 3.2, the Investor covenants and agrees that it shall, and shall cause its Affiliates to, for a period of 24 months after the date hereof, retain and not sell, transfer, assign, pledge or otherwise dispose of all or any part of, or interest in, the Securities issued to it pursuant to (a) the Asset Purchase Agreement, (b) Article 2 hereof, or (c) upon the exercise or exchange of any Securities issued to it pursuant to Article 2 hereof, without the prior written consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed.

### 3.2 Exceptions

Notwithstanding Section 3.1 above:

- (a) if the Investor wishes to sell a number of its Securities which represents greater than or equal to 5% of the then outstanding Common Shares (the “**Sale Shares**”), the Investor will first give written notice to the Company (the “**Sale Notice**”), specifying the number of Sale Shares the Investor wishes to sell and the minimum cash price which the Investor is prepared to accept, and the Company will then have the right for a period of five Business Days (the “**Sale Response Period**”) to designate the purchaser(s) of the Sale Shares. If such purchaser(s) are not underwriters purchasing on a Bought Deal basis, the Investor will be provided, prior to the expiry of the Sale Response Period, with an executed purchase agreement with respect to the sale of such Sale Shares that is acceptable to the Investor, acting reasonably;
- (b) in the event that the Company declines to designate purchaser(s) for the Sale Shares or fails to provide the Investor with an executed purchase agreement as required, then the Investor may for a period of 120 days following the expiry of the Sale Response Period sell such Sale Shares to other purchasers, provided that the Investor complies with Section 3.2(c);
- (c) if, at any time the Investor wishes to sell or otherwise dispose of any Sale Shares, the Investor shall only do so through:

- (i) a broad market distribution or through the facilities of any Exchange upon which Common Shares are then traded, in which case the provisions of Section 8.2 may apply;
  - (ii) a private transaction or series of private transactions as a result of which no individual purchaser together with its Affiliates will acquire from the Investor, Sale Shares representing more than 5% of the outstanding Common Shares; or
  - (iii) a private transaction or series of private transactions as a result of which, an individual purchaser together with its Affiliates may acquire from the Investor, Sale Shares representing more than 5% of the outstanding Common Shares but only in circumstances where the Investor provides Company with a Sale Response Period as referenced in Section 3.2(b) above equal to 60 days; and
- (d) notwithstanding the foregoing the Investor has the right at any time to sell or transfer any of their Common Shares to an Affiliate, provided such Affiliate agrees in writing, by executing a counterpart signing page, to be bound by the obligations set out in this Section 3.2.

### **3.3 Investor Voting**

Investor hereby agrees that it shall and shall cause its Affiliates to vote (or cause to be voted) all of the Common Shares held by it from time to time at any meeting of the Shareholders, and in any action by written consent of the Shareholders, in accordance with the recommendations of the Board or management of the Company on all matters to be submitted to the Shareholders in connection with such meeting or action including, but not limited to, voting the Common Shares for the election of management's nominees for directors of the Company, except in the case of voting or actions by written consent in respect of, in connection with or related to:

- (a) any issuer bid, insider bid, related party transaction or business combination within the meaning of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* or any take-over bid within the meaning of National Instrument 62104 – *Take-Over Bids and Issuer Bids*;
- (b) any amendment to the constating documents of the Company, other than immaterial changes that are administrative in nature;
- (c) any matter in relation to which a recognized proxy advisor is recommending against management of the Company or the Board on any resolution for shareholders;
- (d) any disposition of assets for consideration equal to or greater than 50% of the market capitalization of the Company immediately prior to the entering into of such transaction;

- (e) any proposed distribution of Securities where the number of Common Shares issued or issuable thereunder is greater than 25% of the Common Shares which are outstanding (on a non-diluted basis) immediately prior to the closing thereof;
- (f) in any circumstances where:
  - (i) the Company, its Affiliates or their respective directors and officers are not in compliance with this Agreement; or
  - (ii) the Company, its Affiliates or their respective directors and officers are not in compliance with all Applicable Laws (including, without limitation, applicable Securities Laws or the rules and policies of the Exchange), except for immaterial non-compliance on an isolated basis that is cured to the reasonable satisfaction of Investor within thirty (30) days,

in which case the Investor shall be entitled to vote its Common Shares in its discretion. For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, any Investor Nominee on the Board will not be required to vote in accordance with the recommendations of the Board or management of the Company but will exercise his or her fiduciary responsibilities as a director by voting as he or she sees fit (and which discretionary voting will not, for the avoidance of doubt, be considered a breach of this Section 3.3).

## **ARTICLE 4 GOVERNANCE MATTERS**

### **4.1 Right to Nominate Directors**

- (a) The Investor shall be entitled to designate one individual (the “**Investor Nominee**”) to be appointed as of the date hereof (or such other date after the date hereof that the Investor elects but which date is least twenty (20) Business Days prior to the date on which proxy solicitation materials are to be mailed by the Company (as advised by the Company to the Investor at least thirty (30) Business Days prior to such date)) until the next meeting of Shareholders and, at each meeting of Shareholders at which directors of the Company are to be elected following the date hereof, to be nominated as a director of the Company at each such meeting of Shareholders, provided that the Investor Nominee consents in writing to serve as a director.
- (b) The Investor Nominee shall at all times (i) meet the qualification requirements to serve as a director under (A) the rules and policies of the Exchange, (B) the Act, and (C) any other Applicable Laws, and (ii) be acceptable to the nominating committee of the Board, acting reasonably (collectively, the “**Director Eligibility Criteria**”), provided however that any Investor Nominee need not be qualified as “independent” within the meaning of National Instrument 52-110 - *Audit Committees* of the Canadian Securities Administrators.

- (c) The Company shall take all commercially reasonable steps as may be necessary to appoint the Investor Nominee to the Board as soon as possible after the designation of such Investor Nominee by the Investor in accordance with Section 4.1(a).
- (d) The Company shall cause the Investor Nominee to be included in the slate of nominees proposed by the Board to its Shareholders for approval as directors at each meeting of the Shareholders where directors are to be elected by Shareholders.
- (e) The Company shall use all commercially reasonable efforts to cause the election of the Investor Nominee, including soliciting proxies in favour of the election of the Investor Nominee and providing a public endorsement of the Investor Nominee.
- (f) Investor shall advise the Company of the identity of each Investor Nominee at least twenty (20) Business Days prior to the date on which proxy solicitation materials are to be mailed by the Company (as advised by the Company to Investor at least thirty (30) Business Days prior to such date) for purposes of any meeting of Shareholders at which directors are to be elected. If Investor does not advise the Company of the identity of the Investor Nominee prior to such deadline, then Investor will be deemed to have nominated the incumbent Investor Nominee.
- (g) If the Investor Nominee ceases to hold office as a director of the Company for any reason (including death, disability, resignation or removal by Investor), Investor shall be entitled to nominate an individual (so long as such individual satisfies the Director Eligibility Criteria) to replace him or her and the Company shall promptly take all commercially reasonable steps as may be necessary to appoint, within ten (10) Business Days of such nomination, such individual to the Board to replace the Investor Nominee who has ceased to hold office. Any such succeeding individual shall thereafter be an Investor Nominee.
- (h) Each Investor Nominee shall be entitled to the benefit of any directors' liability insurance or indemnity, including entering into a form of indemnification agreement between the Company and the Investor Nominee in the same form to which other directors of the Company are entitled, to which other directors of the Company or any of its Subsidiaries, as applicable, are entitled.
- (i) In the event the number of directors on the Board is increased after the date hereof to more than ten directors, Investor shall be entitled to designate to be nominated as director of the Company one additional director, in addition to the one Investor Nominee pursuant to Section 4.1(a), provided at the time of such increase in the size of the Board the Participating Percentage is at least ten percent, and the provisions of this Section 4.1 regarding such additional nominee, his or her qualifications and the process to cause such individual's election to the Board shall apply *mutatis mutandis*.

## 4.2 Management to Endorse and Vote

The Company hereby agrees that it shall use its commercially reasonable efforts to cause the executive management of the Company to, in respect of every meeting of Shareholders at which the election of the directors is to be considered, and at every reconvened meeting following an adjournment or postponement thereof, endorse and recommend the Investor Nominee identified in the Company's proxy materials for election to the Board so long as such Investor Nominee satisfies the Director Eligibility Criteria, and shall vote their Common Shares in respect of which management is granted a discretionary proxy in favour of the election of such Investor Nominee to the Board at every such meeting.

## ARTICLE 5 RIGHT TO INFORMATION

### 5.1 Right to Information

From and after the date hereof at the request of the Investor the Company shall provide the Investor with monthly exploration reports updating the status of the Company's work programs on the Projects including, but not limited, reasonable access to the Company's scientific and technical data, work plans and programs, permitting information and results of operations. The Company shall not be obligated to provide a monthly exploration report if one has not been prepared for internal use. Following the delivery of each report the Company shall use commercially reasonable efforts to respond to reasonable questions and inquiries from the Investor with respect to the report and the contents thereof. The Investor shall hold all reports including, but not limited to, all scientific and technical data, work plans and programs, permitting information and results of operations forming part thereof and all subsequent information provided to the Investor by the Company in relation thereto in the strictest confidence and shall protect and safeguard the confidential and proprietary nature thereof exercising the same degree of care that the Investor exercises over its own confidential information.

### 5.2 Confidential Information

- (a) The Investor hereby agrees that all information provided to the Investor pursuant to Section 5.1 (whether disclosed in writing, orally, visually, electronically or by any other means, and whether pursuant to a request by the Investor pursuant to Section 5.1 or otherwise) (herein collectively referred to as the "**Confidential Information**") is confidential and proprietary to Company and that the Confidential Information will remain the exclusive property of Company and will be kept confidential by Investor and its Affiliates and the respective directors, officers, employees, representatives, advisors and agents thereof (herein collectively referred to as "**Agents**" and individually as an "**Agent**"), to the extent the Confidential Information is disclosed to such Affiliates and Agents, provided, however, that:
  - (i) the Confidential Information may be disclosed to the Affiliates of Investor and the Agents who have been informed of the confidential nature of the

Confidential Information and who agree to treat such Confidential Information as confidential consistent with the terms hereof;

- (ii) the Investor agrees (x) that Investor is responsible for (A) any breach of this Agreement by any Affiliate of Investor or any Agent, and (B) any unauthorized use or disclosure of any Confidential Information by any Affiliate of Investor or any Agent, (y) to take all commercially reasonable measures (including, but not limited to, court proceedings) to restrain such Affiliates of Investor and Agents from disclosure or improper use of the Confidential Information or from breaching or threatening to breach any other provision of this Agreement, and (z) that Company, will not be required to first assert a claim against any of such persons as a condition of seeking or obtaining a remedy against Investor; and
  - (iii) disclosure of the Confidential Information may be made to any other persons to whom Company may specifically consent, in advance, in writing from time to time.
- (b) Confidential Information shall cease to be subject to the restrictions set forth in Section 5.2(a) to the extent that such Confidential Information:
- (i) enters the public domain and becomes generally available to the public other than as a result of direct or indirect disclosure by the Investor, any Affiliate of the Investor or any Agent; or
  - (ii) is generally known to the public on the date hereof or at the time of the disclosure of such information by Company to Investor or later becomes generally known to the public, in either case other than as a result of disclosure in violation of the terms of this Agreement by the Investor, any Affiliate of the Investor or any Agent after the date hereof; or
  - (iii) was developed by the Investor without violating the terms of this Agreement or use of, in whole or in part, of any of the Confidential Information prior to or independent of any disclosure by the Company; or
  - (iv) is available to the Investor on a non-confidential basis prior to disclosure by the Company or becomes available to the Investor on a non-confidential basis from a person other than the Company or any of its Affiliates, provided that such person is not then in violation of a confidentiality obligation owed to the Company, of which the Investor is aware.
- (c) If the Investor is required to disclose Confidential Information by Applicable Laws or stock exchange requirements the Investor shall immediately notify the Company of such requirement so that the Company may seek, at its sole cost and expense, a protective order or other remedy, and the Investor shall reasonably assist the Company therewith. If the Investor remains legally compelled to make such disclosure, it shall:

- (i) only disclose that portion of the Confidential Information that it is required to disclose; and
  - (ii) use commercially reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.
- (d) The Investor hereby agrees that the Confidential Information will be used only for the purpose of evaluating the advancement and progress of the Projects and not in any way detrimental to, or so as to obtain any commercial advantage over, the Company or the Affiliates of the Company.
- (e) Following termination of this Agreement the Investor shall upon receipt of a written request to do so from Company, within 10 business days either (i) destroy all copies of the Confidential Information and expunge all Confidential Information from any computer, word processor, disk or other similar device into which it was programmed or inputted by or on behalf of Investor, or (ii) return at Investor's own expense all Confidential Information to Company and expunge all Confidential Information from any computer, word processor, disk or other similar device into which it was programmed or inputted by or on behalf of Investor; provided that the Investor may keep a summary of the Confidential Information so as to be able to identify the nature of the Confidential Information that the Investor has returned or destroyed or as may be required by Applicable Laws (and in the case of its Agents, may retain such Confidential Information as is required to be retained for the purpose of any professional standards, practices, codes or insurance policies that may be applicable). Furthermore, the Investor and its Agents shall not be required to return to the Company, or destroy, any materials as a result of an automated data back-up system used in the ordinary course of business to which users would not normally have access in the ordinary course of business. Investor agrees to have an authorized officer of Investor certify in writing to Company within 10 business days of the request that Investor has complied with its obligations under this provision. Notwithstanding the return or destruction of the Confidential Information, Investor and the Affiliates of Investor will continue to be bound by the obligations hereunder.
- (f) The foregoing requirements in the paragraph above shall not apply to any analyses, compilations, studies, models or other documents prepared by the Investor or any of its Affiliates or Agents based on or containing Confidential Information which documents may be retained by the Investor and shall be otherwise considered as "Confidential Information" for the purposes of this Agreement during its term.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to the Investor as follows and acknowledges and agrees that the Investor is relying on such representations and warranties to enter into this Agreement and to consummate the transactions contemplated under the Asset Purchase Agreement:

## **6.1 Organization and Status**

The Company is duly incorporated and organized, and is validly subsisting, under the laws of Canada and is up-to-date in the filing of all corporate and similar returns under the laws of that jurisdiction. There are no other jurisdictions where the Seller carries on its Business or where it either owns or operates any assets or in which the nature of the Business or the assets makes the registration, licensing or qualification as an extra-provincial or foreign corporation necessary.

## **6.2 Corporate Power**

The Company has all necessary corporate power and authority to enter into this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to be delivered and to perform its obligations hereunder and thereunder.

## **6.3 Authorization**

All necessary corporate action has been taken by the Company to authorize the execution and delivery of this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to be delivered by it the performance of its obligations hereunder and thereunder.

## **6.4 Enforceability**

This Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement have been duly executed and delivered the Company, as applicable, and (assuming due execution and delivery by the Investor) are legal, valid and binding obligations of the Company, enforceable against it in accordance with their terms, except as that enforcement may be limited by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

## **6.5 Absence of Conflict**

The execution, delivery and performance by the Company of this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to which the Company is a party will not (whether after the passage of time or notice or both) conflict with, result in a violation or breach of, constitute a default or require any Consent (other than such as has already been obtained), to be obtained under, or give rise to any termination rights or payment obligation under, any provision of:

- (a) to the knowledge of the Company, (A) any judgment, decree, order or award of any Governmental Authority having jurisdiction over it, or (B) any applicable Law;
- (b) any provision of its Constatting Documents or resolutions of its board of directors (or any committee thereof) or shareholders; or

- (c) any license or registration or any agreement, contract or commitment, written or oral, to which the Company is a party to or bound by or subject.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF THE INVESTOR**

The Investor represents and warrants to the Company as follows and acknowledges and agrees that the Company is relying on such representations and warranties to enter into this Agreement and to consummate the transactions contemplated under the Asset Purchase Agreement:

### **7.1 Organization and Status**

The Investor is duly incorporated and organized, and is validly subsisting, under the laws of Ontario and is up-to-date in the filing of all corporate and similar returns under the laws of that jurisdiction. There are no other jurisdictions where the Seller carries on its Business or where it either owns or operates any assets or in which the nature of the Business or the assets makes the registration, licensing or qualification as an extra-provincial or foreign corporation necessary.

### **7.2 Corporate Power**

The Investor has all necessary corporate power and authority to enter into this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to be delivered and to perform its obligations hereunder and thereunder.

### **7.3 Authorization**

All necessary corporate action has been taken by the Investor to authorize the execution and delivery of this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to be delivered by it the performance of its obligations hereunder and thereunder.

### **7.4 Enforceability**

This Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement have been duly executed and delivered the Investor, as applicable, and (assuming due execution and delivery by the Investor) are legal, valid and binding obligations of the Investor, enforceable against it in accordance with their terms, except as that enforcement may be limited by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

### **7.5 Absence of Conflict**

The execution, delivery and performance by the Investor of this Agreement and of all contracts, agreements, instruments, certificates and other documents required by this Agreement to which the Investor is a party will not (whether after the passage of time or notice or both) conflict with,

result in a violation or breach of, constitute a default or require any Consent (other than such as has already been obtained), to be obtained under, or give rise to any termination rights or payment obligation under, any provision of:

- (a) to the knowledge of the Investor, (A) any judgment, decree, order or award of any Governmental Authority having jurisdiction over it, or (B) any applicable Law;
- (b) any provision of its Constatng Documents or resolutions of its board of directors (or any committee thereof) or shareholders; or
- (c) any license or registration or any agreement, contract or commitment, written or oral, to which the Investor is a party to or bound by or subject.

## **ARTICLE 8 REGISTRATION RIGHTS**

### **8.1 Piggyback Registration Rights**

- (a) If the Company proposes to make a Distribution, other than by way of a Bought Deal, the Company shall promptly give the Investor ten (10) Business Days' prior written notice of the proposed Distribution, including proposed pricing. Upon the written request of the Investor given within five (5) Business Days after receipt of the notice of the proposed Distribution from the Company, the Company shall use commercially reasonable efforts to, in conjunction with the proposed Distribution, cause to be qualified in such offering such number of Common Shares held by the Investor in accordance with the procedures set forth herein as specified by the Investor (a "**Piggyback Registration**"), provided that if the lead underwriter or underwriters of such proposed Distribution, acting in good faith, advise the Company in writing that, in its or their good faith judgment, the inclusion of such Common Shares held by Investor in the proposed Distribution should be limited (a) due to market conditions, or (b) because the number of Common Shares proposed to be distributed is likely to have a significant adverse effect on the successful marketing of the proposed Distribution (including the price acceptable to the Company), then the maximum number of Common Shares that the lead underwriter advises or lead underwriters advise should be distributed shall be allocated as follows: (i) first, to the number of Common Shares that the Company proposes to Distribute; and (ii) second, subject to the preceding sentence, to the number of Common Shares held by the Investor, if any, that may be accommodated in such Distribution.
- (b) If the proposed Distribution is not completed within one hundred and eighty (180) days of a notice of a Piggyback Registration, the related notice of a Piggyback Registration delivered by Investor hereunder shall be deemed to be withdrawn and the Company shall again be required to comply with the procedures set out in this Section 8.1 with respect to any proposed Distribution.
- (c) If the Company is proposing to undertake a Bought Deal, the Company shall give such notice to Investor, including anticipated pricing, as early as practicable in the

circumstances in light of the speed and urgency under which Bought Deals are conducted (but not less than two (2) Business Days prior to the launch or public announcement of such Bought Deal). Investor shall have one (1) Business Day from the date the Company advises it of such proposed Bought Deal to notify the Company of the number of Common Shares held by the Investor that the Investor requests to be included in such Bought Deal; unless otherwise agreed to by the Company, such amount not to exceed the proportion in the Bought Deal that the Common Shares held by Investor represent of all outstanding Common Shares. The Company shall use commercially reasonable efforts to include such Common Shares held by the Investor in any Bought Deal, and, if so included, the procedures set forth below shall apply to such Distribution; provided that if the lead underwriter or underwriters of such proposed Bought Deal, acting in good faith, advises the Company in writing that, in its or their good faith judgment, the inclusion of the Common Shares held by Investor in the proposed Bought Deal should be limited (a) due to market conditions, or (b) because the number of Common Shares proposed to be distributed is likely to have a significant adverse effect on the successful marketing of the proposed Distribution (including the price acceptable to the Company), then the maximum number of Common Shares that the lead underwriter advises or lead underwriters advise should be Distributed shall be allocated as follows: (i) first, to the number of Common Shares that the Company proposes to Distribute; and (ii) second, to the number of Common Shares held by the Investor, if any, that may be accommodated in such Distribution.

## 8.2 Demand Registration Rights

- (a) If the Investor wishes to effect a Distribution the Investor may, subject to Section 8.2(b), deliver a written request (a “**Demand Registration Notice**”) that the Company effect a registration of all or any portion of the Common Shares held by the Investor (a “**Demand Registration**”) in (i) all or any of the Reporting Jurisdictions in accordance with applicable Securities Laws. A Demand Registration Notice will be in writing and will specify the number of Common Shares held by the Investor to be sold (the “**Demand Registration Shares**”), the intended method of disposition and the jurisdictions in which the Demand Registration is to be effected (the “**Designated Qualifying Jurisdictions**”). Subject to the limits and requirements set out in Section 8.2(b), the Company will, as soon as practicable and in any event within 90 days following receipt of a Demand Registration Notice, use its best efforts to register the Distribution of the Demand Registration Shares in each of the Demand Qualifying Jurisdictions.
- (b) Notwithstanding Section 8.2(a):
  - (i) the Company will not be required to effect a Demand Registration in respect of a number of Demand Registration Shares that is expected to result in gross proceeds of less than \$10,000,000;

- (ii) the Company will not be required to effect more than one Demand Registration in any 12-month period;
- (iii) the Company may defer a Demand Registration for up to 90 days if the Company delivers to the Investor a certificate signed by an executive officer of the Company stating that, in the good faith judgment of the board of directors of the Company, effecting the Demand Registration would be materially adverse to the Company; provided however, that the Company may not rely on this Section 8.2(b)(iii) more than once in any 12-month period;
- (iv) the Company will not be required to effect a Demand Registration if the applicable Demand Registration Notice is received within 90 days after the completion of a firm commitment underwritten public offering of Common Shares in respect of which (A) the Investor was entitled to participate pursuant to Section 8.1 and (B) if the Investor exercised its right to participate in such offering, at least 50% of the Common Shares then held by the Investor requested to be included in such offering were so included; and
- (v) the Company will not be required to effect a Demand Qualification if the Company in good faith expects (A) to complete a firm commitment underwritten public offering of Common Shares within 60 days after receiving the applicable Demand Registration Notice and (B) that all Demand Registration Shares specified in the applicable Demand Registration Notice will be entitled to be included in such firm commitment underwritten public offering of Common Shares pursuant to Section 8.1, provided however, that the Company may not rely on this Section 8.2(b)(v) more than once in any 12-month period.

### **8.3 Company Obligations and Registration Procedures**

Whenever the Company is under an obligation pursuant to the provisions of this Agreement to effect the qualification of Common Shares in connection with a Distribution on behalf of Investor:

- (a) The Company shall prepare and file as expeditiously as commercially reasonable with the appropriate Securities Regulatory Authorities all documents reasonably necessary, including, if required, a prospectus or short form prospectus and any amendment or supplement thereto, to qualify for Distribution the Common Shares and, in so doing, act as expeditiously as is commercially practicable and in good faith to settle all deficiencies and obtain those receipts and clearances and provide those customary undertakings and commitments as may be reasonably required by any Securities Regulatory Authority, all as may be necessary to permit the Distribution in compliance with all Securities Laws. Notwithstanding the foregoing, in the event the Distribution is to be made pursuant to a Bought Deal in accordance with this Agreement, the Company shall attend to such preparations

and filings as soon as is commercially practical in the circumstances taking into account the speed and urgency under which Bought Deals are conducted.

- (b) In the case of a Demand Registration only, the Investor may select one or more underwriters to serve as lead underwriter or bookrunner.
- (c) Prior to the filing of a prospectus and up to the date of completion of the Distribution of the Common Shares, subject to all Securities Laws, the Company shall permit Investor to review and participate in the preparation of the prospectus and any related offering materials or filings and shall allow any underwriters or agents involved to conduct any due diligence investigations reasonably requested.
- (d) During the period from the date of initiation of the Distribution and up to the date of completion of the Distribution of the Common Shares, the Company shall promptly notify Investor in writing of:
  - (i) any filing made by the Company of information relating to the Distribution with any Securities Regulatory Authority and any correspondence with any Securities Regulatory Authority regarding the Distribution;
  - (ii) any material change within the meaning of Securities Laws (actual, anticipated, contemplated or threatened, financial or otherwise) in the business, affairs, operations, assets, liabilities (contingent or otherwise), capital or prospects of the Company;
  - (iii) any material fact within the meaning of Securities Laws which has arisen or has been discovered and would have been required to have been stated in the prospectus and any related offering materials or filings had the fact arisen or been discovered on, or prior to, the date of such document; and
  - (iv) any change in any material fact within the meaning of Securities Laws (which for the purposes of this Agreement shall be deemed to include the disclosure of any previously undisclosed material fact) contained in the prospectus or any related offering materials or filings which fact or change is, or may be, of such a nature as to render any statement in any such document misleading or untrue in any material respect or which would result in a misrepresentation within the meaning of Securities Laws in any such document, or which would result in any such document not complying with Securities Laws.
- (e) Promptly, and in any event within any applicable time limitation, the Company shall comply with all applicable filings and other requirements under Securities Laws as a result of a material change, the discovery of a material fact or the change in a material fact referred to under Section 8.3(d) provided that the Company shall not file any amendment to the prospectus or other document without first complying with its obligations in Section 8.3(c).

- (f) The Company shall furnish to Investor such number of copies of any preliminary prospectus, prospectus and any supplements or amendments thereto, any documents incorporated by reference in such prospectus and such other documents as Investor may reasonably request in order to facilitate such Distribution.
- (g) If an underwritten public offering is contemplated, the Company shall execute and perform the obligations under an underwriting agreement in a form reasonably satisfactory to Investor containing customary representations, warranties and indemnities for the benefit of Investor, the Company and the underwriter(s).
- (h) Subject to Securities Laws, the Company shall keep the prospectus effective until Investor has completed the sale of Common Shares under the prospectus, but no longer than ninety (90) days from the date of the prospectus, provided that Investor uses commercially reasonable efforts to complete such sale as soon as reasonably practicable.
- (i) The Company shall use commercially reasonable efforts to furnish to the underwriter(s) involved in the Distribution all documents as they may reasonably request.
- (j) The Company shall take such other customary actions and execute and deliver such other customary documents as may be reasonably necessary to give full effect to the rights of Investor under this Agreement.
- (k) The Company shall use its commercially reasonable efforts to list the Common Shares on each Exchange on which Common Shares are then listed or quoted, if such Common Shares are not already so listed or quoted.
- (l) The Company shall use commercially reasonable efforts to prevent the issuance of any cease trading order suspending the use of any prospectus and, if any such order is issued, to obtain the withdrawal of any such order.
- (m) The Company shall use its commercially reasonable efforts to furnish, at the request of Investor, on the date that such Company Shares are delivered to the underwriters for sale in connection with the Distribution:
  - (i) an opinion, dated such date, of the Company's counsel for the purposes of such Distribution, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to Investor and the underwriters, if any; and
  - (ii) a letter, dated such date, from the Company's auditors, in form and substance as is customarily given by auditors to underwriters in an underwritten public offering, addressed to Investor and the underwriters, if any.

#### **8.4 Investor Obligations**

Investor will furnish to the Company such information and execute such documents regarding the Common Shares and the intended method of disposition thereof as the Company may reasonably request in order to effect the requested qualification for sale or other disposition in accordance with this Agreement and Securities Laws. If an underwritten public offering is contemplated, Investor shall execute an underwriting agreement containing customary representations, warranties and indemnities (and contribution covenants) for the benefit of the underwriters and the Company; provided that the obligation to indemnify shall be limited in amount to the gross proceeds received by Investor from the sale of Common Shares pursuant to such Distribution. Investor will have the right to withdraw from a proposed underwritten public offering at any time prior to the signing of the underwriting agreement, without incurring any obligation to the Company or any proposed underwriter, except as set forth below.

#### **8.5 Registration and Selling Expenses**

- (a) All Registration Expenses incurred in respect of a Distribution shall be borne by the Company, provided that in all cases Investor shall bear the fees and expenses of its counsel.
- (b) Selling Expenses, if any, shall in all cases be borne by the Company and Investor pro rata in respect of the Common Shares being Distributed by the Company and Investor, respectively.

#### **8.6 Indemnification**

- (a) The Company will indemnify the Investor, each of its officers, employees, directors and agents, with respect to a registration which has been effected pursuant to this Agreement, and each underwriter, if any, of the Company's securities covered by such registration, against all expenses, claims, losses (excluding loss of profit), damages or liabilities (or actions in respect thereof) including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or any violation or alleged violation by the Company of Securities Laws in connection with any such registration, and the Company will reimburse Investor, each of its officers, employees, directors, and agents, for any reasonable legal and any other expenses incurred in connection with investigating, preparing for or defending any such claim, loss, damage, liability or action, provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission in any information relating solely to Investor or an underwriter, which information has been provided to the Company in writing by Investor or such underwriter, respectively, contained in

such prospectus, or any amendment or supplement thereto; and provided, further, that the Company will not be liable with respect to any loss, claim, damage or liability with respect to any person who purchased Common Shares and to whom there was not sent or who was not given a copy of any amended, supplemented or final prospectus, as applicable, with respect to such Common Shares, if (i) such loss, claim, damage or liability results from an untrue statement or an omission or alleged untrue statement or omission contained in any preliminary or other prospectus that was corrected in such amended, supplemented or final prospectus and (ii) the Company had previously furnished copies of such amended, supplemented or final prospectus to Investor or the underwriters for Investor.

- (b) In connection with any Demand Registration and Piggyback Registration, the Investor will indemnify and hold harmless the Company and each of the Company's officers, employees, directors and agents, from and against any expenses, claims, losses (excluding loss of profit), damages or liabilities (or actions in respect thereof) including any of the foregoing incurred in settlement of any litigation, commenced or threatened, that arises out of or is based on any untrue statement or omission or alleged untrue statement or omission in any information relating solely to the Investor, which information has been provided to the Company in writing by the Investor, contained in such prospectus, or any amendment or supplement thereto; provided that the Investor will not be liable under this Section 8.6(b) for any settlement of any action effected without its written consent, which consent will not be unreasonably withheld or delayed; and provided, further, that the Investor will not be liable with respect to any loss, claim, damage or liability with respect to any person who purchased Common Shares and to whom there was not sent or who was not given a copy of any amended, supplemented or final prospectus, as applicable, with respect to such Common Shares, if (i) such loss, claim, damage or liability results from an untrue statement or an omission or alleged untrue statement or omission contained in any preliminary or other prospectus that was corrected in such amended, supplemented or final prospectus and (ii) the Company or underwriters had previously furnished copies of such amended, supplemented or final prospectus to Investor or the underwriters for Investor
- (c) Each party entitled to indemnification under this Section 8.6 (the "**Specified Indemnified Party**") will give written notice to the party required to provide indemnification (the "**Specified Indemnifying Party**") promptly after such Specified Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and will permit the Specified Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Specified Indemnifying Party, who will conduct the defense of such claim or litigation, will be approved by the Specified Indemnified Party (whose approval will not be unreasonably withheld), and the Specified Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Specified Indemnified Party to give notice as provided herein will not relieve the Specified Indemnifying Party of its obligations hereunder unless the failure to give such notice is materially prejudicial

to a Specified Indemnifying Party's ability to defend such action. A Specified Indemnified Party will have the right to retain its own counsel, with fees and expenses to be paid by the Specified Indemnifying Party, if representation of such Specified Indemnified Party by the counsel retained by the Specified Indemnifying Party would be inappropriate due to actual or potential conflicting interests between such Specified Indemnified Party and any other party represented by such counsel in such proceeding. No Specified Indemnifying Party, in the defense of any such claim or litigation, will, except with the consent of each Specified Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Specified Indemnified Party of a release from all liability in respect to such claim or litigation.

- (d) If the indemnification provided for herein is held by a court of competent jurisdiction to be unavailable to a Specified Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to therein, then the Specified Indemnifying Party, in lieu of indemnifying such Specified Indemnified Party hereunder, will contribute to the amount paid or payable by such Specified Indemnified Party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Specified Indemnifying Party on the one hand and of the Specified Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations, provided, however, that the liability of Investor under this Section 8.6 will not exceed the net proceeds from the offering received by Investor. The relative fault of the Specified Indemnifying Party and of the Specified Indemnified Party will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Specified Indemnifying Party or by the Specified Indemnified Party and the parties' relative intent with respect to, knowledge regarding and opportunity to correct, such information.
- (e) Notwithstanding the foregoing, to the extent that the provisions regarding indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions of the underwriting agreement shall prevail.

## **8.7 Due Diligence Rights**

In connection with the preparation and filing of any prospectus herein contemplated, the Company will give the Investor and any underwriter for the Investor, and their respective counsel, auditors and other representatives, the opportunity to participate in the preparation of such prospectus and each amendment thereof or supplement thereto, and will insert therein such material furnished to the Company in writing, which in the reasonable judgment of the Investor and any such underwriters, and their respective counsel, should be included, and will give each of them such reasonable and customary access to the Company's books and records and such

reasonable and customary opportunities to discuss the business of the Company with its officers and auditors as will be necessary in the reasonable opinion of the Investor and any such underwriters, and their respective counsel, and to conduct all reasonable and customary due diligence which the Investor and any such underwriters, and their respective counsel, may reasonably require in order to conduct a reasonable investigation for purposes of establishing, to the extent permitted by law, a due diligence defence as contemplated by applicable Securities Laws and in order to enable the Investor and any such underwriters to execute the certificate required to be executed by them under applicable Securities Laws for inclusion in each such prospectus.

## **ARTICLE 9 OTHER COVENANTS OF THE COMPANY**

### **9.1 Reporting Issuer Status and Listing of Common Shares**

The Company shall during the term hereof, for a period of two year following the termination hereof, use commercially reasonable efforts to:

- (a) maintain the Company's status as a "reporting issuer" not in default under the Securities Laws in each of the Reporting Jurisdictions; and
- (b) maintain the listing of the Common Shares on the TSX-V or another Exchange;

provided that these covenants shall not restrict or prevent the Company from engaging in or completing any transaction which would result in the Company ceasing to be a "reporting issuer" or the Common Shares ceasing to be listed on the TSX-V or another Exchange so long as (a) the holders of Common Shares receive cash or securities of an entity which is listed on an Exchange, or (b) the Shareholders have approved the transaction.

### **9.2 No Conflict With Shareholders' Rights Plan**

The Company shall ensure that any shareholder rights plan or similar instrument adopted by the Company shall not restrict, limit, prohibit or conflict with the exercise by the Investor of any of its rights hereunder and nothing herein shall be construed as permitting the Investor to acquire Securities in excess of 19.9% of the Company's Common Shares.

## **ARTICLE 10 TERMINATION**

### **10.1 Termination**

This Agreement shall terminate on the date that the Participating Percentage becomes less than 10%.

## **ARTICLE 11 GENERAL**

### **11.1 Business Opportunities**

To the fullest extent permitted by Applicable Laws, neither the Investor nor any of its Affiliates shall have any obligation to refrain from (a) engaging in the same or similar activities or lines of business as the Company or any of its Subsidiaries, (b) investing or owning any interest publicly or privately in, or developing a business relationship with, any person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Company or any of the Subsidiaries, or (c) doing business with any counterparty of the Company or any of the Subsidiaries.

### **11.2 Additional Rights**

If, prior to the date that is six (6) months after the date of this Agreement, the Company enters into an agreement with, or grants any right or benefit to, any person in connection with such person's investment in the Company or acquisition or purchase of any securities of the Company or otherwise that has the effect of establishing any investor or shareholder right or benefit to such person that is more favourable than the rights and benefits of the Investor under this Agreement, the Company shall promptly, but no later than three (3) Business Days after entering into such agreement, undertaking or understanding, (i) notify the Investor in writing of such agreement, undertaking or understanding, and (ii) without any further action required by the Investor and without any additional obligation imposed on the Investor, grant identical rights, mutatis mutandis, to the Investor.

### **11.3 Conflicting Agreements**

The Company agrees that it shall not enter into any agreement or arrangement of any kind with any person with respect to any Common Shares in conflict with the provisions of this Agreement or for the purpose or with the effect of denying or reducing the rights of the Investor under this Agreement.

### **11.4 Notices**

All notices, requests, demands or other communications required or permitted to be given by one Party to another under this Agreement (each, a "Notice") shall be given in writing and delivered by personal delivery or delivery by recognized national courier, sent by delivered by registered mail, postage prepaid, or by electronic communication (including e-mail but excluding Internet or intranet websites) addressed as follows:

If to the Investor:

Goldcorp Inc.  
3400, 666 Burrard Street  
Vancouver, British Columbia V6C 2X8

Attention: Jason Attew  
Senior Vice President  
Corporate Development and Strategy  
Email: Jason.Attew@goldcorp.com

If to the Company:

Orla Mining Ltd.  
Suite 1240  
1140 West Pender Street  
Vancouver, British Columbia V6E 4G1

Attention: Marc Prefontaine  
E-mail: marc@orlaminig.com

with a copy (which will not constitute notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Attention: Kari MacKay  
Email: kmackay@goodmans.ca

or at such other address or e-mail address at which the addressee may from time to time notify the addressor. Any Notice delivered by personal delivery or by courier to the Party to whom it is addressed as provided above shall be deemed to have been given and received on the day it is so delivered at such address. If such day is not a Business Day, or if the Notice is received after 4:00 p.m. (addressee's local time), then the Notice shall be deemed to have been given and received on the next Business Day. Any Notice sent by prepaid registered mail shall be deemed to have been given and received on the fourth Business Day following the date of its mailing. Notices sent to an e-mail address shall be deemed to be received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such Notice is not sent on a Business Day or is sent after 4:00 p.m. (addressee's local time) on a Business Day, such Notice shall be deemed to have been given and received on the first Business Day after its transmission.

### **11.5 Waiver**

Except as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence, forbearance or other accommodation by a Party shall constitute a waiver of such Party's right to insist on performance in full and in a

timely manner of all covenants in this Agreement or in any document delivered pursuant to this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

### **11.6 Severability**

If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be illegal, invalid or unenforceable: (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Person or circumstance shall not be affected thereby; and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth in this Agreement. Each provision of this Agreement shall be legal, valid and enforceable to the fullest extent permitted by law.

### **11.7 Assignment and Enurement**

- (a) This Agreement will become effective when executed by the Parties and thereafter will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
- (b) Neither this Agreement nor any of the rights, duties or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Parties. Any attempt to assign any of the rights, duties or obligations in this Agreement without such written consent is void. Notwithstanding the forgoing, the Parties agree that Investor may assign this Agreement to an Affiliate provided that Investor agrees to remain bound by the terms of this Agreement.

### **11.8 Expenses**

Except as otherwise expressly provided in this Agreement, each Party to this Agreement shall pay its respective legal, accounting and other professional advisory fees, costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement and all documents and instruments executed or delivered pursuant to this Agreement, as well as any other fees, costs and expenses incurred, unless otherwise specifically set out in this Agreement.

### **11.9 Further Assurances**

The Parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

### **11.10 No Presumption**

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise

favouring or disfavouring either Party by virtue of the authorship of any provision of this Agreement or the payment of any legal services associated therewith.

**11.11 Execution by Electronic Transmission**

The signature of any of the Parties may be evidenced by a facsimile, scanned email or internet transmission copy of this Agreement bearing such signature.

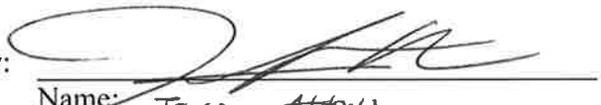
**11.12 Counterparts**

This Agreement may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Notwithstanding the date of execution or transmission of any counterpart, each counterpart shall be deemed to have the effective date first written above.

**[SIGNATURE PAGES TO IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first written above.

**GOLDCORP INC.**

By:   
Name: Jason Attew  
Title: SVP Corporate Development & Strategy.

**ORLA MINING LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first written above.

**GOLDCORP INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ORLA MINING LTD.**

By:  \_\_\_\_\_  
Name: Marc Prefontaine  
Title: President and Chief Executive Officer