

## INVESTOR RIGHTS AGREEMENT

THIS AGREEMENT is made the 19th day of December, 2024,

BETWEEN:

**THE HAWTHORNE COLLECTIVE, INC.**, a corporation existing under the laws of the State of Ohio,

(hereinafter referred to as the “**Investor**”),

- and -

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

(hereinafter referred to as the “**Company**”),

WHEREAS reference is made to (i) a convertible promissory note dated August 24, 2021 in the principal amount of C\$188,475,000 issued by RIV Capital Inc. (“**RIV**”) in favour of the Investor (the “**First Note**”); and (ii) a convertible promissory note dated April 22, 2022 in the principal amount of C\$31,272,501.15 issued by RIV in favour of the Investor (the “**Second Note**” and together with the First Note, the “**Notes**”);

AND WHEREAS RIV and the Company entered into an arrangement agreement dated as of May 30, 2024, as amended on August 27, 2024, pursuant to which the parties have agreed to consummate a business combination pursuant to a court approved plan of arrangement (the “**Arrangement**”), in a transaction intended to qualify as a “reorganization” within the meaning of section 368(a)(1)(B) of the Internal Revenue Code of 1986, as amended;

AND WHEREAS in connection with the consummation of the Arrangement, the Investor transferred and assigned the Notes to the Company in exchange (the “**Exchange**”) for 153,069,395 non-voting shares (the “**Exchangeable Shares**”) that are exchangeable, at the option of the holder thereof, into common shares in the capital of the Company (the “**Common Shares**”) on a 1:1 basis, subject to customary adjustments;

AND WHEREAS in connection with the Exchange, the Company has agreed to grant certain rights set out herein to the Investor, on the terms and subject to the conditions set out herein;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Defined Terms

For the purposes of this Agreement (including the recitals hereto), unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Act**” means the *Business Corporations Act* (Ontario);

**"Affiliate"** means a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified; provided, however, that the Company and its Subsidiaries shall be deemed not to be Affiliates of the Investor or any of its Affiliates. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise;

**"Arrangement"** has the meaning given to such term in the recitals hereto;

**"Beneficial Ownership"** means, with respect to a Person, as at any time, the aggregate interest of such Person and its Affiliates calculated as a percentage, (a) the numerator of which shall be the number of Common Shares beneficially owned or controlled by such Person and its Affiliates at the relevant date (including any Common Shares underlying any Convertible Securities beneficially owned or controlled by such Person and its Affiliates), and (b) the denominator of which shall be the sum of the number of Common Shares issued and outstanding as at such relevant date (assuming the exchange or conversion, as applicable, of any issued and outstanding Exchangeable Shares and Proportionate Voting Shares) plus (without double counting) the number of Common Shares underlying any Convertible Securities beneficially owned or controlled by such Person and its Affiliates at the relevant date;

**"Beneficial Ownership Requirement"** means, as at any date, that the Investor beneficially owns or controls at least 10,000,000 Common Shares (including any Common Shares underlying any Convertible Securities beneficially owned or controlled by the Investor and its Affiliates), which number is subject to appropriate adjustment for any stock splits, stock dividends, combinations, recapitalizations, reorganizations or similar transactions;

**"Board of Directors"** or **"Board"** means the board of directors of the Company;

**"Board Size"** has the meaning given to such term in Section 2.1(j);

**"Business Day"** means any day, other than (a) a Saturday, Sunday or statutory holiday in the Province of Ontario or the State of Ohio, or (b) a day on which banks are generally closed in the Province of Ontario or the State of Ohio;

**"Canadian Piggyback Registration"** has the meaning given to such term in Section 4.5(a);

**"Canadian Securities Commissions"** means the securities commissions or similar securities regulatory authorities in each of the provinces and territories of Canada;

**"Canadian Securities Laws"** means the applicable securities legislation of each of the provinces and territories of Canada and all regulations, published policy statements, Orders, rules, instruments, rulings and published interpretation notes issued thereunder or in relation thereto;

**"Change of Control Transaction"** shall mean the occurrence of any of the following:

- (a) (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than to the Company or to any wholly-owned Subsidiary of the Company), or (ii) a plan or scheme of arrangement, merger, amalgamation, consolidation, share sale or other transaction or series of related transactions, in which all or substantially all of the Shares are exchanged for, converted into, acquired for, or constitute solely the right to receive, other securities, cash or other property, that would result in the Persons who beneficially own, directly or indirectly, 100% of the issued and outstanding Shares as of immediately prior to such transaction ceasing

to beneficially own, directly or indirectly, at least a majority of the outstanding Common Shares or outstanding common equity securities of the surviving entity (including any Common Shares, common equity securities or voting shares that would be beneficially owned by such Persons on an as-converted or as-exchanged basis with respect to the Shares) immediately following the completion of such transaction or series of related transactions; or

- (b) the consummation of any transaction or series of related transactions (including pursuant to a merger, amalgamation or consolidation), the result of which is that any Person, including any Persons acting jointly or in concert with such Person, becomes the beneficial owner, directly or indirectly, of Shares representing more than 50% of the voting power of all of the Company's then-outstanding Shares;

**"Closing"** means the closing of the Arrangement;

**"Common Shares"** has the meaning given to such term in the recitals hereto;

**"Company"** has the meaning given to such term in the preamble hereto;

**"Company Indemnified Parties"** has the meaning given to such term in Section 4.8(b);

**"Company Parties"** has the meaning given to such term in Section 5.4;

**"Competitor"** means a Person (other than the Investor or any of its Affiliates) engaged, directly or indirectly (including through any other Person), in the cultivation of cannabis (other than solely non-THC cannabis), the manufacture of cannabis-related products (other than solely non-THC cannabis-related products), or the operation of cannabis dispensaries, but excludes any financial investment firm and its Affiliates (provided no such Affiliate otherwise meets the definition of "Competitor"); provided that, for purposes of this definition, "cannabis-related products" shall exclude lighting, nutrients, growing media, growing environments, growing inputs and hardware products, technology or other products or services, in each case, used in connection with indoor and hydroponic gardening;

**"Confidential Information"** means, subject to Section 5.5(d), any and all information, in any form or medium, written or oral, whether concerning or relating to the Company, its Subsidiaries, Investees, or its and their respective officers and employees (whether prepared by or on behalf of the Company or otherwise, and irrespective of the form or means of communication) that is furnished to the Investor or its Representatives by or on behalf of the Company at any time, whether before, upon or after the execution of this Agreement, including all oral and written information relating to financial statements, projections, evaluations, plans, strategy, programs, customers, suppliers, facilities, equipment and other assets, products, processes, manufacturing, marketing, research and development, trade secrets, know-how, patent applications that have not been published, technology and intellectual property of the Company and its Subsidiaries or Investees. "Confidential Information" shall be deemed to include the portion of all notes, analyses, studies, interpretations, memoranda and other documents, material or reports (in any form or medium) prepared by the Investor and its Representatives that contain, reflect or are based upon, in whole or part, the information furnished to or on behalf of the Company;

**"Convertible Securities"** means securities which are exercisable for, convertible into or exchangeable for Common Shares, including Exchangeable Shares and Proportionate Voting Shares;

**"CSE"** means the Canadian Securities Exchange or any successor thereto;

**"Demand Registration"** has the meaning given to such term in Section 4.1(a);

**“Demand Registration Request”** has the meaning given to such term in Section 4.1(a);

**“Distribution Expenses”** means, other than Selling Expenses and any fees and expenses of Investor’s external legal counsel, all fees and expenses incurred in connection with or incidental to a Demand Registration or Piggyback Registration or the performance of Article 4 hereof, including: (a) applicable registration, listing and filing fees; (b) fees and expenses of compliance with applicable Securities Laws; (c) printing and copying expenses; (d) messenger and delivery expenses; (e) expenses incurred in connection with any road show and marketing activities; (f) fees and disbursements of counsel to the Company; (g) fees and disbursements of all independent public accountants (including the expenses of any audit and/or “comfort” letter) and fees and expenses of any other special experts retained by the Company; (h) translation expenses; (i) reasonable legal fees and disbursements of legal counsel for the Investor in all relevant jurisdictions, up to \$85,000 in the aggregate per Piggyback Registration or Demand Registration; (j) all listing fees, (k) all registrars’ and transfer agents’ fees; and (l) any other fees and disbursements of underwriters customarily paid by issuers or sellers of securities;

**“Exchangeable Shares”** has the meaning given to such term in the recitals hereto;

**“Exempt Issuance”** means the issuance by the Company of Common Shares or Convertible Securities: (a) as full or partial consideration in connection with any merger, business combination or similar transaction, tender offer, exchange offer, formal take-over bid, statutory amalgamation, statutory arrangement or other statutory procedure, or purchase of the securities or assets of a corporation or other entity; (b) upon the exercise, exchange or conversion of any Convertible Securities (i) that are outstanding as of the Closing, provided such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Closing; or (ii) that were issued as part of a Subsequent Offering that was offered to the Investor in accordance with Section 3.1, to the extent required by Section 3.1; (c) pursuant to employee, advisor, director or advisory board compensation arrangements, including stock option or other equity based compensation plans, in each case, that have been approved by the Board of Directors; (d) as a result of stock dividends declared in accordance with the articles of the Company; (e) as a bona fide commission or finder’s fee paid to a third party on arm’s length terms approved by a majority of the disinterested members of the Board of Directors; (f) pursuant to any shareholder rights plan approved by the Board of Directors; or (g) to the Investor or its Affiliates;

**“Exercise Notice”** has the meaning given to such term in Section 3.1(c);

**“Exercise Notice Period”** has the meaning given to such term in Section 3.1(c);

**“Governmental Entity”** means any domestic or foreign federal, provincial, regional, state, municipal, local or other government, governmental department, agency, arbitrator, authority or body (whether administrative, legislative, executive or otherwise), court, tribunal, commission or commissioner, bureau, minister or ministry, board or agency, or other regulatory or self-regulatory authority, including any securities regulatory authorities and stock exchange including the CSE and any other exchange on which the securities of the Company are listed or posted for trading;

**“Investee”** means, as to any Person, any other Person in which the Person has made a direct or indirect investment in, other than a Subsidiary of such Person;

**“Investor”** has the meaning given to such term on the first page of this Agreement;

**“Investor Indemnified Parties”** has the meaning given to such term in 4.8(a);

**“Investor Nominee”** has the meaning given to such term in Section 2.1(a);

**"Laws"** means any and all federal, state, provincial, regional, national, foreign, local, municipal or other laws, statutes, acts, treaties, constitutions, principles of common law, resolutions, ordinances, proclamations, directives, codes, edicts, Orders, rules, regulations, rulings or requirements or other legally binding directives or guidance issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and includes Securities Laws;

**"Maximum Offering Size"** means, if the lead underwriter or underwriters in any underwritten Piggyback Registration advise the Company (in good faith and without any influence from the Company) in writing that the inclusion of all the securities requested to be included in, as applicable, the Piggyback Registration or Demand Registration, including securities offered by the Company for its own account, as applicable, may have an adverse effect on the distribution or sales price of the securities being offered unless the number of such securities is reduced, the reduced offering size recommended by the lead underwriter or underwriters;

**"Order"** means any judgment, decision, decree, injunction, ruling, writ, assessment or order of any Governmental Entity that is binding on a Person or its property under applicable Law;

**"Ownership Certificate"** has the meaning given to such term in Section 5.2;

**"Participation Right"** has the meaning given to such term in Section 3.1(b);

**"Person"** means and includes any individual, corporation, limited partnership, general partnership, joint stock company, limited liability company, joint venture, association, company, trust, bank, trust company, pension fund, business trust or other organization, whether or not a legal entity and any Governmental Entity;

**"Piggyback Notice"** has the meaning given to such term in Section 4.5(a);

**"Piggyback Registration"** means a U.S. Piggyback Registration or a Canadian Piggyback Registration;

**"Piggyback Registration Statement"** has the meaning given to such term in Section 4.4(a);

**"Piggyback Request"** has the meaning given to such term in Section 4.5(a);

**"Piggyback Shelf Registration Statement"** has the meaning given to such term in Section 4.4(a);

**"Piggyback Shelf Takedown"** has the meaning given to such term in Section 4.4(a);

**"Proportionate Voting Shares"** means the proportionate voting shares in the capital of the Company;

**"Prospectus"** means as the context requires, a "preliminary prospectus," "amended and restated preliminary prospectus" and a "final prospectus", as those terms are used in National Instrument 41-101 – *General Prospectus Requirements*, including all amendments and supplements thereto;

**"Registrable Securities"** means (a) the Common Shares beneficially owned by the Investor by virtue of the exchange of the Exchangeable Shares; (b) any Common Shares issued or issuable with respect to any shares described in clause (a) above by way of a stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other reorganization or other similar event with respect to the Common Shares; (c) any Common Shares issued to the Investor after the date of this Agreement pursuant to Article 3; and (d) any Common Shares issued or issuable with respect to the exchange of any Exchangeable Shares issued after the date of this Agreement. As

to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the SEC has declared a Registration Statement covering such securities effective and such securities have been disposed of pursuant to such effective Registration Statement; (ii) such securities are sold under circumstances in which all of the applicable conditions of Rule 144 under the U.S. Securities Act are met; (iii) such securities become eligible for sale pursuant to Rule 144 without volume or manner-of-sale restrictions and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1), as set forth in a written opinion letter to such effect, addressed, delivered and reasonably acceptable to the applicable transfer agent and the Company; (iv) such securities are otherwise transferred; or (v) such securities have ceased to be outstanding;

**"Registration Statement"** means any registration statement of the Company filed with the SEC under the U.S. Securities Act which covers any of the Registrable Securities, including any U.S. Prospectus, U.S. Shelf Registration Statement and any amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement;

**"Representatives"** means, in respect of any Person, the directors, officers, general and current or prospective limited partners, managers, members, employees, advisors, agents, insurers (including brokers and re-insurers), equity holders, actual or potential sources of debt or equity financing and other representatives (including lawyers, accountants, consultants and financial advisors) of such Person, and in the case of the Investor and its Affiliates, includes any Investor Nominee;

**"RIV"** has the meaning given to such term in the recitals hereto;

**"SEC"** means the United States Securities and Exchange Commission;

**"Securities Laws"** means the Canadian Securities Laws and the U.S. Securities Laws;

**"Selling Expenses"** means any and all underwriting or agents' fees, discounts and commissions, if any, attributable to a sale of Shares in connection with a Piggyback Registration;

**"Shares"** means the Common Shares, the Exchangeable Shares and the Proportionate Voting Shares;

**"Smith Investor Rights Agreement"** means the investor rights agreement between the Company, William Smith and certain entities beneficially owned or controlled by William Smith dated as of the date hereof, as such agreement may be amended or amended and restated from time to time;

**"Subsequent Offering"** has the meaning given to such term in Section 3.1(a);

**"Subsequent Offering Notice"** has the meaning given to such term in Section 3.1(a);

**"Subsidiary"** means, as to any Person (in this definition, the "first Person"), any other Person (in this definition, the "second Person"): (a) in respect of which the first Person or a Subsidiary of the first Person is a general partner or, in the case of a limited liability company, the managing member or manager thereof; (b) of which at least a majority of the outstanding equity interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of the second Person (irrespective of whether or not at the time any equity interests of any other class or classes of the second Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the first Person or one or more of its Subsidiaries; or (c) as to which the first Person consolidates for accounting purposes;

**"Suspension Period"** has the meaning given to such term in Section 4.1(d);

**"THC"** means tetrahydrocannabinol, a chemical compound in cannabis;

**"Transfer"** includes any direct or indirect transfer, sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, granting of any option, right or warrant to purchase (including any short sale, put option or call option) or other disposition;

**"United States"** means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia;

**"U.S. Exchange Act"** means the United States *Securities Exchange Act of 1934*, as amended, and the rules and regulations promulgated thereunder;

**"U.S. Piggyback Registration"** has the meaning given to such term in Section 4.4(a);

**"U.S. Securities Act"** means the United States *Securities Act of 1933*, as amended, and the rules and regulations promulgated thereunder;

**"U.S. Securities Laws"** means the U.S. Exchange Act and the U.S. Securities Act; and

**"Valid Business Reason"** has the meaning given to such term in Section 4.1(d).

## 1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof and include any schedules or exhibits thereto;
- (b) references to an "Article" or "Section" followed by a number or letter refer to the specified Article or Section to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include all genders;
- (e) the word "including" is deemed to mean "including without limitation" and the word "includes" is deemed to mean "includes without limitation";
- (f) the terms "party" and "the parties" refer to a party or the parties to this Agreement;
- (g) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;
- (h) any reference to any agreement, plan, contract or any other written instrument or document (including this Agreement) means such agreement, plan, contract, or written instrument or document as amended, modified, replaced or supplemented from time to time;

- (i) any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder;
- (j) unless otherwise stated, all dollar amounts refer to United States dollars;
- (k) the word "day" means calendar day unless Business Day is expressly specified;
- (l) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends;
- (m) the parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in any agreement or other document will be construed against the party drafting such agreement or document; and
- (n) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day.

### **1.3 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided in this Agreement.

### **1.4 Time of Essence**

Time shall be of the essence of this Agreement.

### **1.5 Governing Law and Submission to Jurisdiction**

- (a) This Agreement and all matters, claims or actions (whether at law, in equity, in contract, in tort or otherwise) based upon, arising out of or relating to this Agreement or the negotiation, execution or performance of this Agreement, shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province, regardless of the Laws that might otherwise govern under any applicable conflict of Laws principles.
- (b) Each of the parties irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement; (ii) agrees to commence such an action or proceeding in Toronto, Ontario, and to cooperate and use its commercially reasonable efforts to bring the action or proceeding before the Ontario Superior Court of Justice (Commercial List); (iii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts; and (iv) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.
- (c) The Investor, being organized under the laws of a foreign jurisdiction and residing outside of Canada, hereby appoints Torys LLP, 79 Wellington St. W., TD South Tower, Toronto, Ontario, M5K 1N2, as their agent for service of process in the Province of Ontario.



## 1.6 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

## 1.7 Certain Terminology

For the purposes of this Agreement, the terms and phrases “acting jointly or in concert”, “beneficial ownership”, “take-over bid” and “issuer bid” (or grammatical variations thereof) shall have the meanings given to them under applicable Canadian Securities Laws and “take-over bid” shall include a tender offer or exchange offer conducted pursuant to applicable U.S. Securities Laws.

## 1.8 Schedules

The following Schedules are attached to and form an integral part of this Agreement:

Registrations      Schedule A      –      Registration Procedures for Demand Registrations and Piggyback

## ARTICLE 2 BOARD NOMINATION RIGHTS

### 2.1 Board of Directors Nominees

- (a) Effective at Closing, the Board of Directors shall consist of seven directors. The Investor shall be entitled to designate two nominees (each, an “**Investor Nominee**”) for election to the Board of Directors; provided, however, that (i) the number of Investor Nominees will be reduced to one if the Beneficial Ownership of the Investor is less than 5%, and (ii) the Investor shall not have any rights to designate Investor Nominees when it ceases to satisfy the Beneficial Ownership Requirement.
- (b) The Investor Nominees must be individuals who meet the qualification requirements to act as directors in accordance with Section 2.2. The parties acknowledge that the initial Investor Nominees shall be Christopher Hagedorn and Dawn Sweeney.
- (c) Where the number of Investor Nominees that the Investor is entitled to designate is reduced pursuant to Section 2.1(a), the Investor shall use reasonable efforts to advise the Company as soon as reasonably practicable, which of the Investor Nominees it wishes to resign from the Board of Directors. The parties hereto will use reasonable efforts to cause the prompt resignation of such Investor Nominee within five days following the date that the Investor delivers notice to the Company.
- (d) The Company shall (i) include the Investor Nominee among the Company's other nominees to the Board of Directors and recommend and reflect such recommendation in any management information circular, press release or other relevant disclosure relating to any meeting where directors of the Company are elected (or submit to shareholders by written consent, if applicable) that the shareholders of the Company vote to elect the Investor Nominee(s) to the Board of Directors for a term of office expiring at the closing of the subsequent annual meeting of the shareholders of the Company; and (ii) solicit proxies

in favour of and otherwise support his or her election, each in a manner no less favourable than the manner in which the Company supports its other nominees selected by the Board of Directors for election to the Board of Directors. For any meeting of the Company's shareholders (or written consent in lieu of a meeting) for the election of members to the Board of Directors, the Company shall not nominate, in the aggregate, a number of nominees greater than the maximum number of directors contemplated by Section 2.1(j) hereof.

- (e) The Company will use commercially reasonable efforts to notify the Investor as to the expected date of any meeting of shareholders to be called for the purpose of electing directors to its Board at least 90 days prior to the date expected for such meeting. At least 5 Business Days prior to designating an individual as an Investor Nominee who is not an incumbent director, the Investor will discuss the identity of each proposed Investor Nominee with the Company. Following such discussion, but prior to the later of (i) 60 days prior to any meeting of shareholders at which directors of the Company are to be elected; and (ii) 14 days after being notified of the record date for such a meeting, the Investor shall advise the Company of the identity of each Investor Nominee that satisfies the requirements of Section 2.2. If the Investor does not advise the Company of the identity of each Investor Nominee prior to such deadline, then the Investor will be deemed to have nominated each incumbent Investor Nominee unless the Investor notifies the Company in writing that it does not wish to nominate a particular Investor Nominee for such election.
- (f) Notwithstanding anything herein to the contrary, a failure by the Investor to designate an Investor Nominee at any time shall not restrict the ability of the Investor to designate such Investor Nominee at any time in the future. If the Investor chooses to replace an Investor Nominee between meetings of Shareholders, the parties hereto shall use reasonable efforts to cause such Investor Nominee to resign or otherwise cease being a member of the Board of Directors. In the event that an Investor Nominee is not duly elected to the Board of Directors or shall cease to serve as a director of the Company, whether due to such Investor Nominee's death, disability, resignation or removal (including failure to be elected by the Company's shareholders or being required to resign in accordance with any applicable majority voting policy), the Company shall cause the Board of Directors to appoint an Investor Nominee designated by the Investor to fill the vacancy so created, provided that the Investor remains eligible to designate an Investor Nominee in accordance with Section 2.1(a) and that the replacement Investor Nominee meets the qualification requirements in Section 2.2. Notwithstanding anything to the contrary set forth in Section 2.1(j), if the Company is prevented by applicable Laws from filling a vacancy with an Investor Nominee in accordance with the foregoing sentence, the Board of Directors shall, to the maximum extent permitted by applicable Laws, promptly resolve to increase the Board Size until the next meeting of the Company's shareholders and appoint such replacement Investor Nominee to the Board of Directors.
- (g) Each Investor Nominee shall be compensated for the Investor Nominee's service on the Board of Directors and any committee thereof consistent with the Company's policies for director compensation, provided that any full-time employee of the Investor or any of its Affiliates who serves as an Investor Nominee shall not be entitled to any salary or compensation from the Company for the Investor Nominee's services. Each Investor Nominee shall be reimbursed for all reasonable expenses related to such service on the Board of Directors (or committee thereof) consistent with the Company's policies for director reimbursement.
- (h) It is acknowledged by the Investor that each Investor Nominee will be required to comply with all policies of the Company that are applicable to members of the Board of Directors.
- (i) The Company shall enter into an indemnification agreement with each Investor Nominee in a form substantially similar to the Company's form of director indemnification agreement

and provide each Investor Nominee with director and officer insurance to the same extent it indemnifies and provides insurance for the other members of the Board of Directors pursuant to the constating documents of the Company, applicable Laws or otherwise.

- (j) The number of directors constituting the full Board (the “**Board Size**”) shall be seven directors and the Board shall not (i) propose or resolve to increase or decrease the Board Size except with the prior written consent of the Investor (except (A) where the Investor has provided notice to the Company in accordance with Section 2.1(e); (B) where the holder of director nomination rights under the Smith Investor Rights Agreement has provided notice to the Company in accordance with the terms of that agreement, in each case that it does not wish to exercise its right to nominate a director nominee for election at any meeting where directors of the Company are elected, in which case the Board may resolve to decrease the Board Size to remove any such director nominee in respect of which such notice is provided; or (C) pursuant to Section 2.1(f), in the event of an appointment of a replacement Investor Nominee, provided that the Board Size shall revert at the next annual meeting or other meeting of shareholders of the Company held for the purposes of electing directors); or (ii) except with the prior written consent of the Investor, and subject to the obligations of the directors of the Company to comply with their fiduciary duties under applicable Law, fail to recommend against any proposal by the Company’s shareholders to increase or decrease the Board Size. If the Board Size is decreased pursuant to this Section 2.1(j), the Board of Directors shall promptly resolve to increase the Board Size if, prior to the next meeting of the Company’s shareholders, the Company receives a notice from the Investor with the identities of any Investor Nominees to which it may be entitled to nominate, in accordance with Section 2.1(e).
- (k) Subject to applicable Law, at least one Investor Nominee shall be appointed to each committee established by the Board, including, for certainty, any ad hoc special committee, strategic advisory committee or other similarly constituted committee of the Board formed for the purposes of, among other things, reviewing, considering or evaluating regulatory issues, strategic initiatives or material transactions involving the Company and/or its Subsidiaries, unless (i) the committee in question has been formed to consider a transaction in which all Investor Nominees or the Investor or any of its Affiliates has a material interest (other than solely as shareholder); or (ii) such appointment would be otherwise inconsistent with the requirements or recommended best practices for the composition of such committees under applicable Securities Laws or the rules of a stock exchange on which the Common Shares are listed.
- (l) The Company will not adopt a majority voting policy with respect to the election of members of the Board of Directors without the unanimous written consent of the Board of Directors, unless required to do so pursuant to applicable Securities Laws or the rules of a stock exchange on which the Common Shares are listed.
- (m) Subject to Section 5.5 and applicable Law, the Investor Nominee shall be permitted to disclose non-privileged information about the Company and its Subsidiaries that the Investor Nominee receives as a result of being a director of the Company to the Investor, its Affiliates and their respective Representatives solely for the purposes of monitoring, administering or managing the Investor’s investment in the Company and advising the Investor Nominee in the Investor Nominee’s capacity as a director of the Company and for no other purpose; provided that the recipient of such disclosure is directed (i) to keep confidential and not disclose any Confidential Information, in each case, in accordance with Section 5.5; and (ii) to comply with all of the covenants applicable to the Investor and its Affiliates contained in Section 5.1. The Investor shall be liable to the Company for any breach of this Section 2.1(m) by the Investor Nominee.

## 2.2 Nominee(s)

- (a) The Investor may appoint any individual as an Investor Nominee provided that such Person:
  - (i) meets the qualification requirements to serve as a director under the Act, applicable Securities Laws and the applicable rules of the CSE or any other exchange on which the Common Shares are listed, and provided further that if the Investor is entitled to designate more than one Investor Nominee, at least one of the Investor Nominees so designated must qualify as an independent director under applicable Securities Laws and/or the applicable rules of the CSE or any other exchange on which the Common Shares are listed; and
  - (ii) is not an employee of, is not involved in the day-to-day operations of, and does not have a fiduciary responsibility to a Competitor.
- (b) If at any time an Investor Nominee fails to satisfy the requirements provided in Section 2.2(a) then the Investor shall use commercially reasonable efforts to procure the immediate resignation of such Investor Nominee and/or remove such Investor Nominee following which the Investor may designate a replacement Investor Nominee in accordance with Section 2.1.
- (c) Notwithstanding Section 2.2, if the Investor Nominee fails to satisfy the requirements in Section 2.2(a)(ii), the Board of Directors may waive such requirements on such terms as the Board of Directors may approve.

## ARTICLE 3 PARTICIPATION RIGHT

### 3.1 Participation Right

- (a) If the Company proposes to issue any Common Shares or Convertible Securities, other than pursuant to an Exempt Issuance (any such issuance, a “**Subsequent Offering**”), then the Company shall promptly following the announcement of such Subsequent Offering, provide a written notice (the “**Subsequent Offering Notice**”) to the Investor setting out: (i) the number of Common Shares or Convertible Securities issued or to be issued; (ii) the material terms and conditions of any Convertible Securities issued or to be issued and any other terms and conditions of such Subsequent Offering; (iii) the subscription price per Common Share or Convertible Security issued or to be issued by the Company under such Subsequent Offering, as applicable (and, in the case of a Subsequent Offering for consideration in whole or in part other than cash, the fair market value thereof as reasonably determined by the Board of Directors); and (iv) the proposed closing date for the issuance of Common Shares or Convertible Securities to the Investor, assuming exercise of the Participation Right by the Investor, which closing date shall be at least 10 Business Days following the date of such notice, or such other date as the Company and the Investor may agree.
- (b) Subject to Section 3.1(c) and the receipt of all required regulatory approvals and compliance with applicable Laws, the Company agrees that the Investor has the right (the “**Participation Right**”), upon receipt of a Subsequent Offering Notice, to purchase (directly or through one of their Affiliates), on substantially similar terms and conditions of such Subsequent Offering (but in any event at the same price per security received by the Company in such Subsequent Offering):

- (i) in the case of a Subsequent Offering of Common Shares, up to such number of Common Shares that will allow the Investor to maintain its Beneficial Ownership immediately prior to the completion of the Subsequent Offering; and
- (ii) in the case of a Subsequent Offering of Convertible Securities, up to such number of Convertible Securities that will (assuming conversion or exchange of all of the Convertible Securities issued in connection with the Subsequent Offering and the Convertible Securities issuable pursuant to this Section 3.1) allow the Investor to maintain its Beneficial Ownership immediately prior to the completion of the Subsequent Offering,

in each case, for certainty, after giving effect to any Common Shares or Convertible Securities acquired by the Investor as part of the Subsequent Offering, other than pursuant to the exercise of the Participation Right.

- (c) If the Investor wishes to exercise the Participation Right in respect of a particular Subsequent Offering, the Investor shall give written notice to the Company (the “**Exercise Notice**”) of the exercise of such right and the number of Common Shares or Convertible Securities, as applicable, that the Investor wishes to purchase or cause to be purchased (subject to the limits prescribed by Section 3.1(b)), within 10 Business Days (or, in the case of a Subsequent Offering that is a public offering in a “bought deal”, three Business Days) after the date of receipt of the Subsequent Offering Notice (the “**Exercise Notice Period**”), provided that if the Investor does not so provide such Exercise Notice prior to the expiration of the Exercise Notice Period, the Investor will not be entitled to exercise the Participation Right in respect of such Subsequent Offering. Each Exercise Notice delivered by the Investor shall set forth the aggregate number of each class of securities of the Company beneficially owned or controlled by the Investor as of the date of such Exercise Notice.
- (d) If the Company receives a valid Exercise Notice from the Investor within the Exercise Notice Period, then the Company shall issue to the Investor, or its Affiliate designated in the Exercise Notice, against payment of the purchase price or subscription price payable in respect thereof set forth in the Subsequent Offering Notice, that number of Common Shares or Convertible Securities, as applicable, set forth in the Exercise Notice, subject to the receipt of all required regulatory and other approvals on terms and conditions satisfactory to the Company, acting reasonably, which approvals the Company shall use commercially reasonable efforts to obtain (including any required shareholder approvals), and subject to compliance with applicable Laws and to the limits prescribed by Section 3.1(b). The Investor acknowledges and agrees that such Common Shares or Convertible Securities may be subject to restrictions on transfer pursuant to applicable Securities Laws. Accordingly, the Investor acknowledges and agrees that prior to the expiry of any applicable hold period under applicable Securities Laws, the certificates (if any) representing such Common Shares or Convertible Securities may bear such legend or legends as may, in the reasonable opinion of counsel to the Company, be necessary in order to comply with applicable Securities Laws or the requirements of, as applicable, the CSE or any other exchange where the Common Shares are listed.
- (e) If the Company is required to seek shareholder approval for the issuance of securities to the Investor, then the Company shall call and hold a meeting of its shareholders to consider the issuance of such securities to the Investor as soon as reasonably practicable, and in any event such meeting shall be held within 75 days after the date that the Company is advised that it will require shareholder approval, and shall recommend approval of the issuance of such securities and shall solicit proxies in support thereof.
- (f) The closing of the exercise of the Participation Right of the Investor will take place on the closing date set out in the Subsequent Offering Notice, which shall be, to the extent practicable, concurrent with the related issuance pursuant to the Subsequent Offering and,

if not practicable, as soon as practicable thereafter. If the closing of the exercise of the Participation Right has not been completed by the 120<sup>th</sup> day (or if shareholder approval is required under subsection (e), the later of the 120<sup>th</sup> day and 10 days after the date of receipt of shareholder approval) following the receipt of the Exercise Notice (or such earlier or later date as the parties may agree), provided that the Company has used its commercially reasonable efforts to obtain all required regulatory and other approvals (including any required shareholder approvals), then the Exercise Notice will be deemed to have been irrevocably withdrawn and the Company will have no obligation to issue any Common Shares or Convertible Securities, as applicable, to the Investor pursuant to such exercise of the Participation Right. If the Investor does not timely elect to exercise its Participation Right in full or if the Exercise Notice is deemed to have been irrevocably withdrawn, then the Company shall be free for a period of 120 days following the expiration of the Exercise Notice Period or the deemed irrevocable withdrawal of the Exercise Notice, as the case may be, to sell the Common Shares or Convertible Securities that are the subject of the Subsequent Offering Notice on terms and conditions not materially more favorable to the purchasers thereof (but in any event with a price no less than those offered to the Investor in the Subsequent Offering Notice). Any Common Shares or Convertible Securities offered or sold by the Company pursuant to such Subsequent Offering after such 120-day period, must be reoffered to the Investor pursuant to this Section 3.1.

- (g) The election by the Investor not to exercise its Participation Right under this Section 3.1 in any one instance shall not affect its right as to any subsequent proposed issuance.
- (h) In the case of an issuance subject to this Section 3.1 for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined in good faith by the Board of Directors.

### 3.2 Filing of Form 72-503F

The Company shall file a Form 72-503F – *Report of Distributions Outside Canada*, within the time frame and form required by OSC Rule 72-503, in each case where securities are issued to the Investor pursuant to the Participation Right if such issuance is (i) not qualified by a Prospectus; and (ii) the Investor is, at the time of that issuance, outside Canada.

## ARTICLE 4 REGISTRATION RIGHTS

### 4.1 Demand Registrations

- (a) At any time and from time to time, the Investor may request the Company to use commercially reasonable efforts to effect a Registration of all or part of its Registrable Securities (such Registration being hereinafter referred to as a “**Demand Registration**”) by filing a Prospectus under the Canadian Securities Laws of the jurisdictions selected by the Investor. Any such request shall be made by notice in writing (a “**Demand Registration Request**”) to the Company. Subject to Section 4.1(b), the Company shall be entitled to include for sale in any Prospectus filed pursuant to a Demand Registration any securities of the Company to be sold by the Company for its own account or for the account of any other shareholder of the Company who is party to a registration rights agreement with the Company. The Company shall as soon as reasonably practical, and in any event within 60 days of receipt of a Demand Registration Request, file a Prospectus under the Canadian Securities Laws of the jurisdictions selected by the Investor covering all of the Registrable Securities that the Investor requested to be registered and, as applicable, any securities offered by the Company for its own account, and use its commercially reasonable efforts to cause a receipt to be issued for such Prospectus as soon as reasonably practicable.

The Company and the Investor shall cooperate in a timely manner in connection with any such distribution and the procedures in Schedule A shall apply.

- (b) If the lead underwriter or underwriters in any underwritten Demand Registration advise the Company in writing that the inclusion of all the securities requested to be included in a Demand Registration, including securities offered by the Company for its own account, as applicable, may have an adverse effect on the distribution or sales price of the securities being offered, the Company shall be permitted to limit the offering size to the Maximum Offering Size and the Company will include in such Registration, in the following priority, in the aggregate up to the Maximum Offering Size: (i) first, all Registrable Securities requested to be registered in the Demand Registration by the Investor, and (ii) second, securities offered by the Company for its own account or securities of the Company offered by another shareholder of the Company who is party to a registration rights agreement with the Company (in proportion to the relevant shares each such Person wishes to sell).
- (c) The Company shall not be obliged to effect:
  - (i) more than one Demand Registrations in any one 12 month period; provided however, that a Registration shall not be deemed "effected" for purposes of this Section 4.1 until such time as a receipt has been issued by, or deemed to be issued by, the applicable Canadian Securities Commission for a final Prospectus pursuant to which all of the Registrable Securities included in the Demand Registration are to be distributed; provided however, that if the Investor voluntarily withdraws, or does not pursue a request for a Demand Registration after (A) filing a preliminary Prospectus pursuant to which the Registrable Securities are to be distributed, or (B) the entering into of an enforceable bought deal letter or an underwriting or agency agreement in connection with the Demand Registration, then such Demand Registration shall be deemed to be effected and provided further that if the Investor withdraws its request for inclusion of its Registrable Securities at any time after having learned of a material adverse change in the condition or business of the Company, or if the Investor withdraws its request during the Suspension Period, the Investor shall not be deemed to have participated in or requested such Demand Registration;
  - (ii) a Demand Registration in respect of a number of Registrable Securities that is expected to result in gross proceeds of less than C\$5 million to the Investor; or
  - (iii) a Demand Registration during the period that is 30 days prior to the Company's good faith estimate of the date of filing of a Company-initiated registration and ending on the 90th day following the date on which a receipt was issued to the Company with respect to any final Prospectus filed by the Company in connection with another Demand Registration or Company-initiated registration.
- (d) The Company may postpone the filing of a Prospectus to effect a Demand Registration for a period of not more than 90 days (a "**Suspension Period**") upon written notice to the Investor, in the event the Board of Directors reasonably determines in good faith that either: (A) the filing of that Prospectus for the Demand Registration would materially impede the ability of the Company to consummate a bona fide transaction (including a financing, an acquisition, a disposition, a restructuring or a merger) or proceed with negotiations or discussions in relation thereto; or (B) there exists at the time material non-public information relating to the Company or its Subsidiaries or Investees, the disclosure of which the Company believes would be materially adverse to the Company and its Subsidiaries and Investees, taken as a whole, and which the Company or its Subsidiaries or Investees are not otherwise required by applicable Law or regulations to disclose; (each of (A) and (B), a "**Valid Business Reason**") provided, however, that (i) the Company shall give written notice to the Investor of the time at which it determines the Valid Business Reason to no

longer exist; and (ii) the Company shall not qualify or register any securities offered by the Company for its own account during the Suspension Period.

- (e) If the Investor provides notice to the Company that the Investor has been advised by outside legal counsel that holding an investment in the Company would reasonably be expected to trigger a violation of, or any significant liability (other than any liability arising from obligations required to be performed by the Investor hereunder) to the Investor and/or its Affiliates under, applicable Laws (which, for greater certainty, shall include any Laws applicable in the United States), which notice outlines the basis upon which the Investor has reached the above-referenced determination, then the Investor shall be entitled to exercise a Demand Registration and to sell all of its Registrable Securities without any of the limitations or constraints on the Investor set forth in Section 4.1(c) or 4.1(d). For the purposes of this 4.1(e), the term "Laws" shall also include the rules and regulations of the Nasdaq Stock Market, the New York Stock Exchange and such other exchanges or marketplaces to which the Investor and/or its Affiliates may be subject.
- (f) The lead underwriter or underwriters for any offering in connection with a Demand Registration shall be selected by the Investor and shall be acceptable to the Company, acting reasonably, and the plan of distribution for such offering in connection with a Demand Registration shall be selected by the Investor in consultation with the Company.

#### **4.2 Demand Registration Request**

Any Demand Registration Request delivered by the Investor pursuant to Section 4.1 hereof shall:

- (a) specify the approximate number of Registrable Securities or approximate gross proceeds which the Investor intends to offer and sell;
- (b) express the intention of the Investor to offer or cause the offering of such Registrable Securities;
- (c) describe the nature or methods of the proposed offer and sale thereof and the jurisdictions of Canada in which such offer shall be made;
- (d) contain the undertaking of the Investor participating in such offering to provide all such information regarding their Common Share holdings and the proposed manner of distribution thereof, as may be reasonably required in order to permit the Company to comply with all Securities Laws; and
- (e) specify whether such offer and sale shall be made by an underwritten public offering.

#### **4.3 U.S. Demand Registration Rights**

The Company covenants and agrees that, in the event the Company proposes to become a U.S. registrant, the Company will, as a condition to so becoming a U.S. registrant, enter into a registration rights agreement with the Investor in a form acceptable to the Investor, acting reasonably, upon terms substantially similar to those provided in this Article 4 with respect to Demand Registrations. The procedures set forth in Schedule A shall apply to any U.S. Demand Registration in connection with which the Investor seeks to include Registrable Securities in accordance with this Section 4.3 on a *mutatis mutandis* basis, with, for the avoidance of doubt, all references therein to Prospectuses and Canadian Securities Commissions being read and interpreted to reference, respectively, the applicable Registration Statement and the SEC.



#### 4.4

#### U.S. Piggyback Registration

- (a) Whenever the Company proposes to register the offer and sale of Common Shares under the U.S. Securities Act, as amended (other than a registration (i) pursuant to a Registration Statement on Form S-8 (or other registration solely relating to an offering or sale to employees or directors of the Company pursuant to any employee stock option plan or other employee benefit arrangement); (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the U.S. Securities Act or any successor rule thereto); or (iii) in connection with any dividend or distribution reinvestment or similar plan), whether for its own account or for the account of one or more shareholders of the Company and the form of Registration Statement (a **"Piggyback Registration Statement"**) to be used may be used for any registration of Registrable Securities (a **"U.S. Piggyback Registration"**), the Company shall give prompt written notice to the Investor of its intention to effect such a registration and, subject to Subsection 4.4(b), shall include in such registration all Registrable Securities with respect to which the Company has received a written request for inclusion from the Investor within 15 days after the Company's notice has been given to the Investor. The Company may postpone or withdraw the filing or the effectiveness of a U.S. Piggyback Registration at any time in its sole discretion. If any Piggyback Registration Statement pursuant to which holders of Registrable Securities have registered the offer and sale of Registrable Securities is a Registration Statement on Form S-3 or the then appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the U.S. Securities Act or any successor rule thereto (a **"Piggyback Shelf Registration Statement"**), the Investor shall be notified of, and have the right, but not the obligation, to participate in any offering under such Piggyback Shelf Registration Statement (a **"Piggyback Shelf Takedown"**). The procedures set forth in Schedule A shall apply to any U.S. Piggyback Registration in connection with which the Investor seeks to include Registrable Securities in accordance with this Section 4.4 on a *mutatis mutandis* basis, with, for the avoidance of doubt, all references therein to Prospectuses and Canadian Securities Commissions being read and interpreted to reference, respectively, the applicable Registration Statement and the SEC.
- (b) If a U.S. Piggyback Registration or Piggyback Shelf Takedown is initiated as a primary underwritten offering on behalf of the Company and the managing underwriter advises the Company in writing that in its reasonable and good faith opinion the number of Common Shares proposed to be included in such registration or takedown, including all Registrable Securities and all other Common Shares proposed to be included in such underwritten offering, exceeds the number of Common Shares which can be sold in such offering and/or that the number of Common Shares proposed to be included in any such registration or takedown would adversely affect the price per share of the Common Shares to be sold in such offering, then the Company shall be permitted to limit the offering size to the Maximum Offering Size and to only include shares in such registration or takedown in the following order of priority: (A) first, the number of Common Shares proposed to be distributed for the account of the Company that represents up to 75% of the Common Shares to be included in such registration or takedown; (B) second, all additional Common Shares proposed to be distributed for the account of the Company, all Registrable Securities requested to be qualified by the Investor and all Common Shares of any other securityholder to be included in such registration or takedown, on a *pro rata* basis based on the amount of Registrable Securities and other Common Shares requested to be included in such registration or takedown; and (C) third, all additional Registrable Securities requested to be qualified by the Investor and all additional Common Shares of any other securityholder to be included in such registration or takedown, on a *pro rata* basis based on the amount of additional Registrable Securities and additional Common Shares requested to be included in such registration or takedown.

- (c) If a U.S. Piggyback Registration or Piggyback Shelf Takedown is initiated as an underwritten offering on behalf of the Company, the Company shall select the investment banking firm or firms to act as the managing underwriter or underwriters in connection with such offering.

#### 4.5 Canadian Piggyback Registration

- (a) If the Company intends to prepare and file a Prospectus in Canada (or in any other jurisdiction in which the Common Shares are listed at the time a Piggyback Notice is provided) in connection with a proposed distribution by the Company of Common Shares for its own account, or for the account of any other securityholder whether pursuant to the exercise of registration rights by such other securityholder or otherwise, the Company shall give written notice thereof (including details of the number of Common Shares to be distributed, the minimum offering price per Common Share that the Company, acting reasonably, would be willing to accept in such distribution and the proposed timing and means of distribution) to the Investor as soon as practicable (and in any event no less than 15 Business Days if such distribution is not to be effected as a “bought deal” or two Business Days if such distribution is to be effected as a “bought deal”) before the anticipated filing date of such Prospectus (or in the case of a “bought deal”, the launch thereof) (the “**Piggyback Notice**”). In such event, the Investor shall be entitled, by notice (the “**Piggyback Request**”) in writing given to the Company within five Business Days after the receipt of the Piggyback Notice (provided that, if such distribution is to be effected as a “bought deal”, the Investor shall respond consistent with the time periods typical for transactions of that nature), to request that the Company cause any or all of the Registrable Securities held by the Investor to be included in such Prospectus (such Registration being hereinafter referred to as a “**Canadian Piggyback Registration**”). The Investor shall specify in the Piggyback Request the number of Registrable Securities which the Investor intends to offer and sell and include the undertaking of the Investor and any applicable Affiliate thereof to provide all such information regarding their Common Share holdings and the proposed manner of distribution of the Registrable Securities, as may be reasonably required in order to permit the Company to comply with all applicable Securities Laws.
- (b) The Company shall include in each such Canadian Piggyback Registration all such Registrable Securities as directed by the Investor. Notwithstanding the foregoing, the Company shall not be required to include all such Registrable Securities in any such distribution:
  - (i) initiated by the Company for its own account if the Company is advised in writing by its lead underwriter or underwriters that the inclusion of all Common Shares proposed to be distributed for the Company's account, all such Registrable Securities and all Common Shares of any other securityholder may have an adverse effect on the distribution or sales price of the securities being offered by the Company, in which case, the number of Common Shares and other Registrable Securities to be included in such Prospectus will be limited to the Maximum Offering Size and the Company will include in such Registration, in the following priority, in the aggregate up to the Maximum Offering Size: (A) first, the number of Common Shares proposed to be distributed for the account of the Company that represents up to 75% of the Common Shares to be included in such Prospectus; (B) second, all additional Common Shares proposed to be distributed for the account of the Company, all Registrable Securities requested to be qualified in the Piggyback Notice and all Common Shares of any other securityholder to be included in such Prospectus, on a *pro rata* basis based on the amount of Registrable Securities and other Common Shares requested to be included in such Prospectus; and (C) third, all additional Registrable Securities requested to be qualified in the Piggyback Notice and all additional Common Shares of any other securityholder to be included in such Prospectus, on a *pro rata* basis based on the

amount of additional Registrable Securities and additional Common Shares requested to be included in such Prospectus; or

- (ii) initiated by any other securityholders, if the other securityholders are advised by their lead underwriter or underwriters that the inclusion of all such Registrable Securities and the Common Shares proposed to be distributed for the Company's account or Common Shares of such other securityholder may have a material adverse effect on the distribution or sales price of the securities being offered by such other securityholders, in which case, the number of Registrable Securities, Common Shares for the account of the Company and the Common Shares of any other securityholder will be limited to the Maximum Offering Size and the Company will include in such Registration, in the following order of priority, in the aggregate up to the Maximum Offering Size: (A) first, all Common Shares proposed to be distributed for the account of the other securityholder, and (B) second, all Registrable Securities and Common Shares proposed to be distributed for the account of the Company on a *pro rata* basis based on the amount of Registrable Securities and Common Shares proposed to be distributed for the account of the Company requested to be included in such Prospectus.
- (c) The Company may, at any time prior to the issuance of a receipt for a final Prospectus in connection with a Canadian Piggyback Registration, at its sole discretion and without the consent of the Investor, withdraw such Prospectus and abandon the proposed distribution in which the Investor has requested to participate pursuant to the Piggyback Request.

#### **4.6 Registration Expenses**

- (a) In the case of a Demand Registration, all Distribution Expenses shall be paid by the parties selling securities under the Demand Registration *pro rata* to the number of securities so sold, subject to a maximum for the Investor of its *pro rata* share of US\$150,000.
- (b) In the case of a Piggyback Registration, all Distribution Expenses shall be paid by the Company.
- (c) The Investor will pay all of its own Selling Expenses, the Company will pay all Selling Expenses of the Company and any other securityholder will pay all Selling Expenses of such securityholder, if any, in connection with any Demand Registration or Piggyback Registration, as the case may be.

#### **4.7 Rights and Obligations of the Company and the Investor**

- (a) The Company will give the Investor, the underwriter or underwriters of such distribution, if any, and their respective counsel, auditors and other representatives, the opportunity to participate in the preparation of such documents and each amendment thereof or supplement thereto, and shall insert therein such material furnished to the Company in writing, which in the reasonable judgment of the Company and its 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 opportunity to discuss the business of the Company with its officers and auditors, and to conduct all reasonable and customary due diligence which the Investor and the underwriters or underwriter, if any, and their respective counsel may reasonably require in order to conduct a reasonable investigation for purposes of establishing a due diligence defence as contemplated by Canadian Securities Laws (and any other applicable Securities Laws) and in order to enable such underwriters to execute any certificate required to be executed by them for inclusion in such documents, provided that the Investor and the underwriters agree to maintain the confidentiality of such information.

- (b) The Investor will furnish to the Company such information and execute such documents regarding the Registrable Securities and the intended method of disposition thereof as the Company may reasonably require in order to permit participation by the Investor under a Demand Registration or a Piggyback Registration. If an underwritten offering is contemplated, the Investor shall execute an underwriting agreement or agency agreement containing customary representations, warranties and indemnities (and contribution covenants) relating only to written information furnished by or on behalf of the Investor expressly for use in connection with a Registration Statement or Prospectus, as applicable (the “**Shareholder Information**”) for the benefit of the Company and the underwriters; provided that the obligation to indemnify shall be limited to the gross proceeds received by the Investor from the sale of Registrable Securities pursuant to such Demand Registration or Piggyback Registration and will apply only to any misrepresentations or omissions of material facts in relation to the Shareholder Information, and shall otherwise be in accordance with Section 4.8 hereof. The Investor shall notify the Company immediately upon the discovery of, or the occurrence of any event as a result of which the Registration Statement or Prospectus, as applicable, includes, an untrue statement of a material fact with respect to the Investor, in its capacity as selling securityholder, or omits to state a material fact with respect to the Investor, in its capacity as selling securityholder, required to be stated therein or necessary to make the statements therein with respect to the Investor, in its capacity as selling securityholder, not misleading in light of the circumstances under which they are made.

#### 4.8 Indemnification

- (a) *By the Company.* The Company agrees to indemnify and hold harmless, to the maximum extent permitted by Law, each holder of Registrable Securities, such holder’s officers, directors, partners, members, managers, employees, advisors, sub-advisors, attorneys, agents and Representatives, and each Person who controls such holder (within the meaning of the Act) (collectively, the “**Investor Indemnified Parties**”) against all losses (other than indirect or consequential damages, including loss of profit in connection with the distribution of the Registrable Securities), claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) caused by, resulting from, arising out of, based upon or related to any of the following statements, omissions or violations by the Company or any of its Representatives acting on its behalf: (i) any untrue or alleged untrue statement of material fact contained in any Prospectus or Registration Statement in respect of a Demand Registration or Piggyback Registration, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any violation or alleged violation by the Company or any of its Representatives of the Securities Laws or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance. In addition, the Company will reimburse such Investor Indemnified Party for any legal or any other expenses reasonably incurred by it in connection with investigating or defending any such losses. Notwithstanding the foregoing, the Company shall not be liable in any such case to the extent that any such losses result from, arise out of, are based upon, or relate to an untrue statement or alleged untrue statement, or omission or alleged omission, made in any such Prospectus or Registration Statement, or in any application, in reliance upon, and in conformity with, Shareholder Information or by such Investor Indemnified Party’s failure to deliver a copy of the Prospectus or Registration Statement or any amendments or supplements thereto after the Company has furnished such Investor Indemnified Party with a sufficient number of copies of the same.
- (b) *By the Investor.* The Investor agrees to indemnify and hold harmless, to the maximum extent permitted by Law, the Company, its directors and officers, directors, parents, members, managers, employees, advisors, sub-advisors, attorneys, agents and

representatives and each Person who controls the Company (within the meaning of the Act) (collectively, the “**Company Indemnified Parties**”) against all losses (other than indirect or consequential damages, including loss of profit in connection with the distribution of the Common Shares), claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) caused by, resulting from, arising out of, based upon or related to any of the following statements, omissions or violations by the Investor or any of its Representatives acting on its behalf: (i) any untrue or alleged untrue statement of a material fact contained in any Prospectus or Registration Statement, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any Shareholder Information; or (ii) any violation or alleged violation by the Investor or its Representatives of the Securities Laws or any rule or regulation promulgated thereunder applicable to the Investor and relating to action or inaction required of the Investor in connection with any such registration, qualification or compliance. In addition, the Investor will reimburse such Company Indemnified Party for any legal or any other expenses reasonably incurred by it in connection with investigating or defending any such losses. Notwithstanding the foregoing, in no event shall any indemnity under this Section 4.8(b), inclusive of any reimbursement of expenses payable by the Investor, exceed an amount equal to the net proceeds received by the Investor (after deducting any discounts and commissions) in respect of the Registrable Securities sold pursuant to a Prospectus or Registration Statement.

- (c) *Claim Procedure.* Any Person entitled to indemnification hereunder shall: (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any Person's right to indemnification hereunder only to the extent such failure has not prejudiced the indemnifying party); and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel satisfactory to the indemnified party, acting reasonably. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel in each jurisdiction for all parties indemnified by such indemnifying party with respect to such claim, unless in the opinion of outside counsel to any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. In such instance, the conflicted indemnified parties shall have a right to retain one separate counsel, chosen by the holders of a majority of the Registrable Securities included in the Registration if such holders are indemnified parties, at the expense of the indemnifying party.
- (d) *Non-Exclusive Remedy; Survival.* The indemnification and contribution provided for under this Agreement shall be in addition to any other rights to indemnification or contribution (but in all cases subject to the financial limitations contemplated by the last sentence of Section 4.8(b)) that any indemnified party may have pursuant to Law or contract and shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the Transfer of Registrable Securities and the termination or expiration of this Agreement.
- (e) *Contribution.* The Company and the Investor also agree to make such provisions, as are reasonably requested by any indemnified party, for contribution to such party in the event the Company's or the Investor's, as applicable, indemnification is unavailable for any reason (other than, with respect to the Investor, as a result of the last sentence of Section

4.8(b). Such provisions shall provide that the liability amongst the various Persons shall be allocated in such proportion as is appropriate to reflect the relative fault of such Persons in connection with the statements or omissions which resulted in losses (the relative fault being determined by reference to, among other things, which Person supplied the information giving rise to the untrue statement or omission and each Person's relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission) and, only if such allocation is not respected at Law, would other equitable considerations, such as the relative benefit received by each Person from the sale of the securities, be taken into consideration. Notwithstanding the foregoing no Person guilty of fraudulent misrepresentation shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

- (f) *Release.* No indemnifying party shall, except with the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.
- (g) *The Company is Trustee.* The Investor hereby acknowledges and agrees that, with respect to this Article 4, the Company is contracting on its own behalf and as agent for the Company Indemnified Parties referred to in this Article 4. In this regard, the Company will act as trustee for such Company Indemnified Parties of the covenants of the Investor under this Article 4 with respect to such Company Indemnified Parties and accepts these trusts and will hold and enforce those covenants on behalf of such Company Indemnified Parties.
- (h) *The Investor is Trustee.* The Company hereby acknowledges and agrees that, with respect to this Article 4, the Investor is contracting on its own behalf and as agent for the Investor Indemnified Parties referred to in this Article 4. In this regard, the Investor will act as trustee for such Investor Indemnified Parties of the covenants of the Company under this Article 4 with respect to such Investor Indemnified Parties and accepts these trusts and will hold and enforce those covenants on behalf of such Investor Indemnified Parties.

#### **4.9 Limitation on Subsequent Registration Rights**

The Company shall not, without the prior written consent of the Investor, enter into any agreement with any holder or prospective holder of the Company's securities that grants such holder or prospective holder rights to include securities of the Company in any Prospectus or Registration Statement under applicable Securities Laws, unless such rights are either pro rata with, or subordinated to, the rights granted to the Investor under this Agreement on terms reasonably satisfactory to the Investor. The Investor hereby acknowledges and consents to the rights granted by the Company pursuant to the Smith Investor Rights Agreement.

#### **4.10 Termination and Suspension of Registration Rights**

- (a) Except for Section 4.8 and this Section 4.10, this Article 4 shall terminate upon the earliest to occur of:
  - (i) the closing of a Change of Control Transaction, in which the consideration received by the Investor in such Change of Control Transaction is in the form of cash and/or publicly traded securities, or if the Investor receives registration rights from the acquiring company or other successor to the Company substantially similar to those set forth in this Article 4; and
  - (ii) the Company having effected five Demand Registrations.

- (b) If not terminated sooner pursuant to Section 4.10(a), Sections 4.3 and 4.4 shall terminate when the Investor may sell Registrable Securities under SEC Rule 144 or another similar exemption under the U.S. Securities Act of 1933, in each case, without volume limitations.

## **ARTICLE 5**

### **ADDITIONAL COVENANTS OF THE PARTIES**

#### **5.1 Standstill**

Subject to the provisions of this Section, the Investor hereby agrees that for a period of 12 months from the date of this Agreement, the Investor shall not and shall cause its Affiliates (regardless of whether an Affiliate or not on the date hereof) not to, without the prior written consent of the Board of Directors of the Company and except as contemplated by this Agreement:

- (a) acquire, offer to acquire or agree to acquire, directly or indirectly, by purchase or otherwise (except pursuant to Article 3), individually or jointly or in concert with any other person (as that expression is defined in the *Securities Act* (Ontario)), any voting securities of the Company or securities convertible into or exchangeable for voting securities of the Company, or direct or indirect rights or options to acquire any voting securities of the Company (except by way of exercise or conversion of Convertible Securities of the Company in accordance with their terms);
- (b) directly or indirectly make, or in any way participate in, any solicitation of proxies to vote, or seek to advise or influence any other person with respect to the voting of any voting securities of the Company;
- (c) otherwise act alone or jointly or in concert with others to obtain representation on the Company's Board of Directors, other than pursuant to Article 2 of this Agreement;
- (d) directly or indirectly engage in any discussions or negotiations, enter into any agreement or submit a proposal to the Company's shareholders for, or offer of (with or without conditions) any business combination, amalgamation, plan of arrangement, or similar transaction involving the Company or any Affiliate of the Company, or any of their respective securities or assets;
- (e) directly or indirectly enter into any discussions or arrangements with, advise, assist or encourage, or act as a financing source for or otherwise invest in, any third party with respect to any of the foregoing actions;
- (f) make any disclosure of any intention to do or take any of the foregoing or take any action that could require the Company to make a public announcement with respect to any of the foregoing; or
- (g) attempt to induce any party not to make or conclude any proposal with respect to the Company by threatening or indicating that the Investor, or any of its Affiliates or any agent of them may take any of the foregoing actions,

provided, however, the foregoing shall not prevent the Investor from making confidential proposals to the Board of Directors of the Company. Nothing in this Section 5.1 shall limit an Investor Nominee's duties as a director or officer of the Company.

Notwithstanding the foregoing, Section 5.1 shall not apply, and the Investor shall be free to engage in any of the activities otherwise prohibited by Section 5.1, (a) from the date the Company or a third party announces, enters into, or announces its intention to enter into or commence a transaction or series of related transactions involving or relating to the Company constituting a Change of Control Transaction of

the Company; or (b) in the event of a proxy contest by a third party other than the Investor, from the date that there are elected to the Board of Directors as constituted immediately prior to such election, new directors comprising more than fifty 50% of the members of the Board of Directors as constituted immediately following such election.

## **5.2 Ownership Certificate**

The Investor agrees to deliver to the Company a written certificate signed by an officer of the Investor (the “**Ownership Certificate**”), certifying as to the number of Common Shares and Convertible Securities beneficially owned or controlled by the Investor and its Affiliates and any other Persons acting jointly or in concert with the Investor, as at the date of such certificate, such Ownership Certificate to be delivered to the Company as reasonably requested from time to time, together with any supporting documentation reasonably requested by the Company.

## **5.3 Information Rights**

In order to facilitate (i) the Investor’s and its Affiliates’ compliance with legal and regulatory requirements applicable to the beneficial ownership by the Investor and its Affiliates of equity securities of the Company; and (ii) oversight of the Investor’s investment in the Company, the Company agrees to provide the Investor with the following, all of which shall be subject to Section 5.5:

- (a) within 120 days after the end of each fiscal year of the Company, (i) an audited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year; and (ii) audited, consolidated statements of income, comprehensive income, cash flows and changes in shareholders’ equity of the Company and its Subsidiaries for such fiscal year; provided that this requirement shall be deemed to have been satisfied if on or prior to such date the Company files its audited annual financial statements with the applicable Canadian Securities Commissions pursuant to National Instrument 51-102 – *Continuous Disclosure Obligations*;
- (b) within 60 days after the end of each of the first three quarters of each fiscal year of the Company, (i) an unaudited, consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal quarter; and (ii) consolidated statements of income, comprehensive income and cash flows of the Company and its Subsidiaries for such fiscal quarter; provided that this requirement shall be deemed to have been satisfied if on or prior to such date the Company files its interim financial report with the applicable Canadian Securities Commissions pursuant to National Instrument 51-102 – *Continuous Disclosure Obligations*;
- (c) as promptly as practicable, a copy of the proposed annual budget for the Company and its Subsidiaries (as shared with the Board); and
- (d) as promptly as practicable following receipt thereof, a copy of any written notice, letter, correspondence or other written communication from a Governmental Entity or any litigation proceedings or filings involving the Company or any of its Subsidiaries, in each case, in respect of the Company’s potential, actual or alleged violation of any and all applicable Laws in any material respect and any written responses by the Company in respect thereto; provided that the Company shall not be required to furnish such copies or other information, the disclosure of which would reasonably be expected to result in the loss or impairment of solicitor-client privilege.

## **5.4 Inspection Rights**

During the term of this Agreement, the Company shall provide the Investor and its Representatives with reasonable access upon reasonable notice during normal business hours, to the



Company's and its Subsidiaries' books and records so that the Investor may conduct reasonable inspections, investigations and audits relating to the information provided by the Company pursuant to this Article 5, as well as to the internal accounting controls and operations of the Company and its Subsidiaries, in each case, as necessary to fulfill Investor's tax and financial reporting obligations or to monitor, administer or manage the Investor's investment in the Company; provided that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the Company and its Subsidiaries and investees (the "**Company Parties**"); (ii) the Investor shall be responsible for any damage to any real property owned or leased by the Company Parties or any other assets or property of the Company Parties caused by Investor or any of its Representatives; and (iii) the Company shall not be required to confer, afford such access or furnish such copies or other information (A) to the extent that doing so would result in the breach of any confidentiality or similar agreement to which any of the Company Parties is a party; or (B) the disclosure of which would reasonably be expected to result in the loss or impairment of solicitor-client privilege; provided that the Company shall identify any such information or materials to which access is not provided and use its reasonable best efforts to allow for such access or disclosure in a manner that does not result in a breach of such agreement or a loss of solicitor-client privilege.

## **5.5 Confidentiality**

- (a) The Investor will, and will cause its Affiliates and Representatives to, keep confidential and will treat confidentially all Confidential Information. The Investor agrees that it will, and will cause its Affiliates and Representatives to, not disclose any Confidential Information nor use the Confidential Information to directly and intentionally compete in any material respect with the Company (for clarity, the Parties acknowledge and agree that the Investor or any of its Affiliates shall not be restricted from, without limitation, (a) undertaking transactions in the ordinary course of business, including, but not limited to, the purchase, sale or leasing of products or services to any customer or supplier of Hawthorne or any of its Affiliates, (b) research and development, and (c) being engaged with any entity in which they have a pre-existing interest as of the date hereof); provided that the Investor may, subject to compliance with the terms hereof, disclose the Confidential Information to its Affiliates or Representatives (including any Investor Nominee).
- (b) As a condition to the furnishing of Confidential Information to an Affiliate or Representative of the Investor, the Investor shall advise such Affiliate or Representative of the confidential nature of and restriction on use of the information disclosed. The Investor agrees that it will be fully responsible for any breach of this Section 5.5 by such Affiliates or Representatives as if such Affiliates or Representatives are an original party hereto. In addition, the Investor will take all commercially reasonable steps, including the obtaining of suitable undertakings, to ensure that Confidential Information is not disclosed to any other Person or used in a manner contrary to this Agreement, and, to the extent reasonably practicable, promptly notify the Company of any unauthorized disclosure of Confidential Information or breach of this Agreement known to the Investor.
- (c) The Investor hereby acknowledges that Securities Laws impose restrictions on its ability to purchase, sell, trade or otherwise Transfer securities of the Company until such time as material, non-public information received by the Investor becomes publicly available or is no longer material, and the Investor further hereby agrees to comply with all such restrictions and to inform those of its Affiliates and Representatives provided with any Confidential Information of such restrictions.
- (d) The term Confidential Information shall exclude any information that: (i) was generally available to the public prior to the date hereof; (ii) becomes generally available to the public (through no violation hereof by the Investor or its Affiliates or Representatives); (iii) was within the Investor's or its Affiliates' or Representatives' possession prior to it being furnished to the Investor or its Affiliates or Representatives by or on behalf of the Company, provided that such information is not, to the Investor's knowledge, subject to any contractual, legal or fiduciary obligations of confidentiality to the Company that would

prevent its use or disclosure; (iv) is obtained by the Investor or its Affiliates or Representatives from a third party who, to the Investor's knowledge, at the time of disclosure, is not prohibited by an obligation to the Company from disclosing such information on a non-confidential basis to the Investor or its Affiliates or Representatives; (v) was independently developed by the Investor or its Affiliates or Representatives, or on the Investor's behalf, without use of or reference to the Confidential Information, and which can be substantiated by written evidence; or (vi) is expressly permitted in writing by the Company to be disclosed to third parties on a non-confidential basis.

- (e) Nothing in this Section 5.5 grants or is to be construed as granting the Investor any title, ownership, license or other right of interest with respect to the Confidential Information. The Company retains all right, title and interest in and to the Confidential Information.
- (f) If the Investor or any of its Affiliates or Representatives is requested or required to disclose any Confidential Information in connection with any legal or administrative proceeding or investigation (including pursuant to the terms of a subpoena or order issued by a court of competent jurisdiction or a regulatory or self-regulatory body), or is requested or required by Law to disclose any Confidential Information, the Investor or such Affiliate or Representative, as applicable, will provide the Company with prompt written notice of any such request or requirement, to the extent reasonably practicable and not prohibited by Law, so that the Company has an opportunity to seek a protective Order or other appropriate remedy or waive compliance with the provisions of this Section 5.5, in each case, at the Company's cost and expense. If the Company waives compliance with the provisions of this Section 5.5 with respect to a specific request or requirement, the Investor or such Affiliate or Representative, as applicable, shall disclose only that portion of the Confidential Information that is covered by such waiver and which is necessary to disclose in order to comply with such request or requirement. If (in the absence of a waiver by the Company) the Company has not secured a protective Order or other appropriate remedy, and the Investor or such Affiliate or Representative is nonetheless required by Law to disclose any Confidential Information, the Investor or such Affiliate or Representative, as applicable, may, without liability hereunder, disclose only that portion of the Confidential Information that is necessary to be disclosed.
- (g) At any time following the termination of this Agreement, the Investor shall, and shall direct its Affiliates and Representatives to, at the option of the Investor, promptly return to the Company or promptly destroy, at the option of the Investor, all Confidential Information (including, electronic copies) supplied by the Company to and in the possession of the Investor or its Affiliates or Representatives, as applicable, without retaining any copy thereof. Notwithstanding the foregoing, (i) the Investor and its Affiliates and Representatives may retain Confidential Information as required to comply with applicable Laws or their respective corporate governance and/or record keeping policies; and (ii) neither the Investor nor its Affiliates or Representatives shall be required to purge their respective computer or electronic archives (including routine computer system backup tapes, disks or other backup storage devices).
- (h) Notwithstanding the return or destruction of the Confidential Information as contemplated hereby or the termination of this Agreement, the Investor will continue to be bound by the terms of this Section 5.5 with respect thereto, including all obligations of confidentiality and restrictions on use for a period of one year from the date of termination of this Agreement.

## **5.6 Privilege**

The provision of any information pursuant to this Agreement shall not be (and shall be deemed not to be) a waiver of any privilege, including privileges arising under or related to the attorney- or solicitor-client privilege or any other applicable privileges.

## **5.7 Certain Transactions**

In the event of any stock split, reverse stock split, stock dividend or distribution, subdivision, or any change in the Common Shares by reason of any recapitalization, combination, reclassification, exchange of shares, merger, consolidation, partial or complete liquidation, share dividend, split-up, sale of assets, distribution to equity holders or similar transactions or change in the Company's capital structure, (i) the terms "Common Shares", "Proportionate Voting Shares" and "Exchangeable Shares" used herein shall, as applicable, be deemed to refer to and include all such dividends and distributions and any other securities into which or for which any or all of such securities may be changed or exchanged or which are received in such transaction; and (ii) the Company agrees that appropriate adjustments shall be made to this Agreement to ensure that the Investor has, immediately after consummation of such transaction, substantially the same rights with respect to the Company or another issuer of securities, as applicable, as they had immediately prior to the consummation of such transaction under this Agreement.

## **ARTICLE 6 MISCELLANEOUS**

### **6.1 Termination**

The term of this Agreement shall commence on the date of this Agreement and shall continue in force until the earlier of (i) such time that the Investor ceases to satisfy the Beneficial Ownership Requirement; and (ii) the mutual written agreement of the Investor and the Company to terminate this Agreement.

### **6.2 Survival**

Notwithstanding Section 6.1, Article 1 (Interpretation), Section 2.1(c) (Resignation of Investor Nominees), Section 2.1(i) (Director Indemnification and Insurance), Section 2.1(m) (Information Sharing), Section 4.6 (Registration Expenses), Section 4.8 (Indemnification), Section 5.5 (Confidentiality) and this Article 6 (Miscellaneous) shall survive the termination of this Agreement and shall remain in full force and effect (provided that Section 2.1(i) will only survive for six years from termination and the use restrictions in Section 5.5(a) will only survive for one year from the date of termination this Agreement). No termination of this Agreement shall constitute a termination or a waiver of any rights of either party against the other party accruing at or prior to the time of such termination.

### **6.3 Notices**

- (a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in Person, transmitted by e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

- (i) in the case of the Investor:

The Hawthorne Collective, Inc.  
14111 Scottslawn Rd.  
Marysville, OH 43041

Attention: Katy Wiles  
Email: [Redacted – personal contact information]

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

Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

Attention: Samuel Waxman  
E-mail: samuelwaxman@paulhastings.com

and

Torys LLP  
79 Wellington Street West, Suite 3300  
Toronto, ON M5K 1N2

Attention: Adrienne DiPaolo  
E-mail: adipaolo@torys.com

(ii) in the case of the Company:

Cansortium Inc.  
5540 W. Executive Drive, Suite 100  
Tamp, Florida 33609

Attention: Robert Beasley  
E-mail: [Redacted – personal contact information]

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

Wildeboer Dellelce LLP  
365 Bay Street, Suite 800  
Toronto, Ontario M5H 2V1

Attention: Jeff Hergott  
E-mail: jhergott@wildlaw.ca

and with a copy (which shall not constitute notice) to:

Shumaker, Loop & Kendrick, LLP  
101 E. Kennedy Blvd., Suite 2800  
Tampa, Florida 33602

Attention: Michael H. Robbins  
E-mail: mrobbins@shumaker.com

- (b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted by email or personally by hand (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. (Toronto time) at the place of receipt, then on the next following Business Day) or, if mailed by internationally recognized overnight courier, on the Business Day following the date of mailing; provided, however, that if at the time of mailing or within two Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

- (c) Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 6.3.

#### **6.4 Amendments and Waiver**

No amendment or waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **6.5 Assignment; Transfer of Rights**

- (a) No party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other party which consent may be withheld in its sole discretion except as otherwise provided herein.
- (b) Notwithstanding the foregoing, the Investor may assign and transfer its rights, benefits, duties and obligations under this Agreement, in whole or in part, without the consent of the Company, to (i) Hagedorn Partnership, L.P.; or (ii) any Affiliate of the Investor, provided that: (A) in the case of an assignment under clause (i) or (ii), Hagedorn Partnership, L.P. or the applicable Affiliate shall, prior to any such assignment, agree to be bound by all of the covenants of the Investor contained herein and comply with the provisions of this Agreement that were applicable to the Investor, and shall deliver to the Company a duly executed undertaking to such effect in form and substance satisfactory to the Company, acting reasonably; (B) in the case of an assignment under clause (i), any Affiliate of the Investor that has been assigned rights under clause (ii) shall automatically be deemed to cease to have any rights or obligations under this Agreement independent of the Investor; and (C) in the case of an assignment under clause (ii), except as otherwise provided herein, where any rights of the Investor under this Agreement have been assigned, such rights shall only be exercised by the Investor and its Affiliates, acting together.
- (c) For certainty, no assignment by the Investor or any assignee (each, an “**Assignee**”) of its rights hereunder shall relieve such Assignee of its obligations hereunder.

#### **6.6 Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the parties and their respective successors and permitted assigns.

#### **6.7 Further Assurances**

Each of the parties hereto shall, from time to time hereafter and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement.

#### **6.8 Right to Injunctive Relief**

Each of the parties hereby acknowledges and agrees that in the event of a breach or threatened breach of any of its covenants hereunder, the harm suffered would not be compensable by monetary damages alone and, accordingly, in addition to other available legal or equitable remedies available to such party, the Investor (in respect of any breach of this Agreement by the Company) and the Company (in respect of any breach of this Agreement by the Investor) shall be entitled to apply for an injunction or specific performance with respect to such breach or threatened breach, without proof of actual damages (and without the requirement of posting a bond, undertaking or other security in connection with

such action), and each of the parties hereby agrees not to plead sufficiency of damages as a defence in such circumstances.

**6.9 Limitation on Damages**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING INCIDENTAL DAMAGES, ECONOMIC DAMAGES OR INJURY TO PROPERTY AND LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN INFORMED, SHOULD HAVE KNOWN OR IN FACT KNEW OF THE POSSIBILITY OF SUCH DAMAGE.

**6.10 Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including by email or scanned pages), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement. Electronic signatures and electronic pdf signatures (including by email or scanned pages) shall be acceptable as a means of executing such documents.

(The remainder of this page is intentionally left blank; signature page follows.)

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties on the date first written above.

**THE HAWTHORNE COLLECTIVE, INC.**

By: (signed) "Christopher Hagedorn"  
Name: Christopher Hagedorn  
Title: President

**CANSORTIUM INC.**

By: (signed) "Robert Beasley"  
Name: Robert Beasley  
Title: Chief Executive Officer

**SCHEDULE A**  
**REGISTRATION PROCEDURES FOR DEMAND REGISTRATIONS AND CANADIAN PIGGYBACK REGISTRATIONS**

**1. Registration Procedures**

In connection with the Demand Registration and Canadian Piggyback Registration obligations pursuant to the Agreement, the Company will use commercially reasonable efforts in accordance with the Agreement to effect the qualification for the offer and sale or other disposition or distribution of Registrable Securities in one or more Canadian jurisdictions, as directed by the Investor in the case of a Demand Registration, and in pursuance thereof, the Company will as expeditiously as reasonably possible:

- (a) prepare and file, in the English language and, if an offering is contemplated in Quebec, the French language, with the applicable Canadian Securities Commissions a Prospectus under and in compliance with the applicable Securities Laws, relating to the applicable Demand Registration or Canadian Piggyback Registration, including all exhibits, financial statements and such other related documents required by the applicable Canadian Securities Commissions to be filed therewith, and use its commercially reasonable efforts to cause the applicable Canadian Securities Commissions to issue a receipt for such Prospectus (unless such Prospectus is a prospectus supplement); and the Company will furnish to the Investor and the lead underwriters or underwriters, if any, copies of such Prospectus and any amendments or supplements in the form filed with the Canadian Securities Commission, promptly after the filing of such Prospectus, amendments or supplements;
- (b) prepare and file with the Canadian Securities Commissions such amendments and supplements to the Prospectus as may be necessary to complete the distribution of all such Registrable Securities and as required under applicable Securities Laws;
- (c) notify the Investor and the lead underwriter or underwriters, if any, and (if requested) confirm such advice in writing, as soon as practicable after notice thereof is received by the Company: (i) when the Prospectus or any amendment thereto has been filed or a receipt has been issued, and furnish to the Investor and lead underwriters or underwriters, if any, with copies thereof; (ii) of any request by the Canadian Securities Commissions for amendments to the Prospectus or for additional information; (iii) of the issuance by the Canadian Securities Commissions of any stop order or cease trade order relating to the Prospectus or any order preventing or suspending the use of any Prospectus or the initiation or threatening of any proceedings for such purposes; and (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in jurisdiction or the initiation or threatening of any proceeding for such purpose;
- (d) promptly notify the Investor and the lead underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the Prospectus contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement therein (in the case of the Prospectus in light of the circumstances under which they were made) when such Prospectus was delivered not misleading, fails to constitute full, true and plain disclosure of all material facts regarding the Registrable Securities when such Prospectus was delivered or if for any other reason it will be necessary during such time period to amend or supplement the Prospectus in order to comply with Securities Laws and, in either case as promptly as practicable, prepare and file with the Canadian Securities Commissions, and furnish to the Investor and the lead underwriters or underwriters, if any, a supplement or amendment to such Prospectus which will correct such statement or omission or effect such compliance;



- (e) use commercially reasonable efforts to obtain the withdrawal of any stop order, cease trade order or other order against the Company or affecting the securities of the Company suspending the use of any Prospectus or suspending the qualification of any Registrable Securities covered by the Prospectus, or the initiation or the threatening of any proceedings for such purposes;
- (f) provide the Investor and its counsel with a reasonable opportunity to review and provide comments to the Company on the Prospectus, which shall be considered for inclusion therein in good faith by the Company;
- (g) deliver to the Investor and the underwriters, if any, without charge, as many commercial copies of the Prospectus and any amendment or supplement thereto as such Persons may reasonably request (it being understood that the Company consents to the use of the Prospectus or any amendment or supplement thereto by the Investor and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by the Prospectus or any amendment or supplement thereto);
- (h) in connection with any underwritten offering enter into customary agreements, including an underwriting agreement with the underwriter or underwriters, such agreements to contain such representations and warranties by the Company and such other terms and provisions as are consistent with those contained in underwriting agreements previously entered into by the Company or customarily contained in underwriting agreements with respect to secondary distributions and indemnification provisions and/or agreements substantially consistent with those contained in underwriting agreements previously entered into by the Company and with the Agreement or customarily contained in underwriting agreements with respect to secondary distributions, but in any event, which agreements will contain provisions for the indemnification by the underwriter or underwriters in favour of the Company with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Prospectus included in reliance upon and in conformity with written information furnished to the Company by any underwriter;
- (i) as promptly as practicable after filing with the applicable Canadian Securities Commissions any document which is incorporated by reference into the Prospectus, provide copies of such document to the Investor and its counsel and to the lead underwriters or underwriters, if any;
- (j) use its commercially reasonable efforts to obtain a customary legal opinion, in the form and substance as is customarily given by external company counsel in securities offerings, addressed to the Investor and the underwriters, if any, and such other Persons as the underwriting agreement may reasonably specify, and a customary "comfort letter" from the Company's auditor and/or the auditors of any financial statements included or incorporated by reference in a Prospectus;
- (k) furnish to the Investor and the lead underwriter or underwriters, if any, and such other Persons as the Investor may reasonably specify, such corporate certificates, satisfactory to the Investor, acting reasonably, as are customarily furnished in securities offerings, and, in each case, covering substantially the same matters as are customarily covered in such documents in the relevant jurisdictions and such other matters as the Investor may reasonably request; and
- (l) provide and cause to be maintained a transfer agent and registrar for such Common Shares not later than the date a receipt is issued for a final Prospectus by the applicable Canadian Securities Commissions and use its best efforts to cause all Common Shares covered by the Prospectus to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed.

## **2. Investor Obligations**

The Investor will furnish to the Company such information and execute such documents regarding the Registrable Securities and the intended method of disposition thereof as the Company may reasonably require in order to effect the requested qualification for sale or other disposition. The Investor will promptly notify the Company if the Investor becomes aware of the happening of any event (insofar as it relates to the Investor or information furnished by it in writing for inclusion in the applicable Prospectus) as a result of which the Prospectus contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement therein not misleading in light of the circumstances under which they are made. In addition, the Investor shall, if required under applicable Securities Laws, execute any certificate forming part of a Prospectus to be filed with the applicable Canadian Securities Commissions.