

## UNDERWRITING AGREEMENT

February 5, 2024

Capstone Copper Corp.  
2100 - 510 West Georgia Street  
Vancouver, BC V6B 0M3

Attention: John MacKenzie, Chief Executive Officer

Orion Fund JV Limited  
Orion Mine Finance Fund II LP  
Orion Mine Finance (Master) Fund I-A LP

c/o Orion Resource Partners (USA) LP  
1045 Avenue of the Americas, 25<sup>th</sup> Floor  
New York, NY 10018

Attention: Oskar Lewnowski, Founder & Group CEO

Dear Messrs. MacKenzie and Lewnowski:

We understand that: (i) Capstone Copper Corp. (the “**Company**”) desires to issue and sell to the Underwriters (as defined below), on a bought deal basis, 47,620,000 Common Shares (as defined below) (the “**Treasury Shares**”) at a price of \$6.30 (the “**Offering Price**”) per Treasury Share (the “**Treasury Offering**”); and (ii) Orion Fund JV Limited, Orion Mine Finance Fund II LP and Orion Mine Finance (Master) Fund I-A LP (collectively, the “**Selling Shareholders**”) desire to sell to the Underwriters, on a bought deal basis, 11,900,000 Common Shares (10,247,358 Common Shares by Orion Fund JV Limited, 1,211,937 Common Shares by Orion Mine Finance Fund II LP and 440,705 Common Shares by Orion Mine Finance (Master) Fund I-A LP) (collectively, the “**Secondary Shares**”, and collectively with the Treasury Shares, the “**Offered Shares**”) at the Offering Price per Secondary Share (the “**Secondary Offering**”, and together with the Treasury Offering, the “**Offering**”).

We also understand that the Company desires to grant the Underwriters an over-allotment option (the “**Over-Allotment Option**”) for the purpose of satisfying over-allotments, if any, and for market stabilization purposes by the Underwriters. The Over-Allotment Option shall entitle the Underwriters to purchase up to an additional 8,928,000 Common Shares from the Company (each, an “**Option Share**”, and collectively, the “**Option Shares**”) at the Offering Price. The Over-Allotment Option may be exercised in whole or in part at any time by the Joint Bookrunners (as defined below), on behalf of the Underwriters, by providing the Company with not less than two (2) Business Days’ notice in writing, at any time prior to 5:00 p.m. (Toronto time) on March 9, 2024 (the “**Option Expiry Date**”) specifying the number of Option Shares in respect of which the Over-Allotment Option is at such time being exercised. The closing date for the Over-Allotment Option (the “**Option Closing Date**”) shall be determined by the Joint Bookrunners, on behalf of the Underwriters, but shall not be earlier than two (2) Business Days or later than five (5) Business Days after

the exercise of the Over-Allotment Option and, in any event, may not be earlier than the Closing Date (as defined below) and may not be later than March 18, 2024.

We understand that the Company:

- (a) has prepared and filed with the British Columbia Securities Commission (the “**Principal Regulator**”) and the other Securities Commissions (as defined below) in accordance with NI 44-101 – *Short Form Prospectus Distributions* (“**NI 44-101**”) and National Instrument 44-102 – *Shelf Distributions* (the “**Shelf Procedures**”) a final short form base shelf prospectus dated March 1, 2023 (the “**Shelf Prospectus**”), relating to the offering by the Company or selling shareholders of up to US\$750,000,000 aggregate offering price of Common Shares, warrants of the Company, subscription receipts of the Company, units of the Company, debt securities of the Company and share purchase contracts of the Company omitting the Shelf Information (as defined below) and other related documents relating to the proposed distribution of the Offered Shares;
- (b) has obtained from the Principal Regulator and the Ontario Securities Commission (the “**OSC**”) a receipt for the Shelf Prospectus representing the deemed receipt of each of the Securities Commissions other than the Principal Regulator and the OSC and evidencing the receipt of the Principal Regulator pursuant to Multilateral Instrument 11-102 – *Passport System* and National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* (collectively, the “**Passport System**”); and
- (c) is prepared to file, without delay, the Prospectus Supplement (as defined below) on or before February 5, 2024 (the Shelf Prospectus, as supplemented by the Prospectus Supplement, together in each case with all documents incorporated by reference therein, is referred to herein as the “**Prospectus**”) and all necessary related documents in order to qualify the Offered Shares for distribution in each of the provinces and territories of Canada, other than Québec (the “**Qualifying Jurisdictions**”).

The information included in the Prospectus Supplement that is permitted under the Shelf Procedures to be omitted from the Shelf Prospectus but that is deemed under the Shelf Procedures to be incorporated by reference into the Shelf Prospectus as of the date of and by virtue of the Prospectus Supplement is referred to herein as the “**Shelf Information**”. RBC Dominion Securities Inc. (“**RBC**”), National Bank Financial Inc. (“**NBF**”), and Scotia Capital Inc. (“**Scotia**”), as joint bookrunners (together, the “**Joint Bookrunners**”), and BMO Nesbitt Burns Inc. (“**BMO**”), Canaccord Genuity Corp. (“**Canaccord**”), and CIBC World Markets Inc. (“**CIBC**”, and together with the Joint Bookrunners, BMO, and Canaccord collectively, the “**Underwriters**”), severally and not jointly, offer to purchase: (i) from the Company, upon and subject to the terms and conditions contained herein, and by its acceptance hereof, (A) the

Company agrees to sell to the Underwriters, at the Closing Time (as defined below), the Treasury Shares for an aggregate purchase price of \$300,006,000, and (B) in the event and to the extent that the Joint Bookrunners, on behalf of the Underwriters, shall exercise the Over-Allotment Option, the Company agrees to sell to the Underwriters, at the Option Closing Time, the applicable Option Shares at the Offering Price; and (ii) from the Selling Shareholders, upon and subject to the terms and conditions contained herein, and by its acceptance hereof, (A) the Selling Shareholders agree to sell to the Underwriters, at the Closing Time, the Secondary Shares for an aggregate purchase price of \$74,970,000.

In consideration of the Underwriters' agreement to purchase the Offered Shares which will result from the acceptance of this offer by the Company and the Selling Shareholders, respectively, and, to the extent that the Over-Allotment Option is exercised, by the Company for the applicable Option Shares, and in consideration of the services to be rendered by the Underwriters in connection therewith: (i) the Company agrees to pay to the Underwriters, at the Closing Time and the Option Closing Time (if applicable), a fee equal to 4.0% of the aggregate purchase price of the Treasury Shares issued and sold under the Treasury Offering; and (ii) the Selling Shareholders agree to pay to the Underwriters, at the Closing Time, a fee equal to 4.0% of the aggregate purchase price of the Secondary Shares sold under the Secondary Offering (collectively, the **"Underwriting Fee"**).

The Offered Shares will be distributed in the Qualifying Jurisdictions by the Underwriters pursuant to the Prospectus, in the United States on a private placement basis pursuant to the exemption from registration provided by Rule 144A under the U.S. Securities Act and in compliance with U.S. Securities Laws to persons reasonably believed to be Qualified Institutional Buyers (as defined below), and in jurisdictions other than the Qualifying Jurisdictions and the United States, except Australia (the **"Other Jurisdictions"**) wherein the filing of a prospectus, registration statement, offering memorandum or any other notice or document with respect to the distribution of the Offered Shares in such Other Jurisdiction shall not be required.

The Underwriters, the Selling Shareholders and the Company acknowledge that Schedule "A" forms an integral part of this Agreement.

## **Terms and Conditions**

### **1. Definitions and Interpretation**

1.1 Whenever used in this Agreement:

**"Agreement"** means this underwriting agreement dated February 5, 2024 among the Underwriters, the Selling Shareholders and the Company;

**"AIF"** means the annual information form of the Company dated March 29, 2023;

**"Applicable Securities Laws"** means the Canadian Securities Laws, the U.S. Securities Laws and all applicable securities laws in the Other Jurisdictions;

**“Auditors”** means Deloitte LLP, the auditors of the Company;

**“ASX”** means the Australian Securities Exchange;

**“Bought Deal Marketing Materials”** means the document dated February 1, 2024 entitled “Bought Deal Treasury and Secondary Offering of Common Shares” that constitutes the Template Version of Marketing Materials that is required to be filed with the Securities Commissions in accordance with NI 44-101;

**“Business Day”** means a day which is not a Saturday, a Sunday or a statutory or civic holiday in Vancouver, British Columbia or New York, New York;

**“Canadian Securities Laws”** means, collectively, and as the context may require, the securities legislation, regulations and the policies of the Securities Commissions;

**“CDIs”** means Chess Depositary Interests over the common shares of the Company, and a **“CDI”** means any one of them;

**“Closing Date”** means February 8, 2024 or such other date as the Company, the Selling Shareholders and the Joint Bookrunners, on behalf of the Underwriters, may mutually agree upon in writing;

**“Closing Time”** means 8:30 a.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as the Company, the Selling Shareholders and the Joint Bookrunners, on behalf of the Underwriters, may mutually agree upon in writing;

**“Common Shares”** means common shares in the capital of the Company, and a **“Common Share”** means any one of them;

**“Company”** means Capstone Copper Corp., a corporation organized under the laws of the Province of British Columbia;

**“Company Financial Statements”** means: (i) the Company’s audited comparative consolidated financial statements and the notes thereto for the financial years ended December 31, 2022 and 2021, together with the independent auditors’ report thereon; and (ii) the Company’s condensed interim consolidated financial statements and the notes thereto for the financial period ended September 30, 2023;

**“Company Indemnified Parties”** has the meaning ascribed thereto in paragraph 11.4;

**“Constating Documents”** means the notice of articles of the Company, and the articles of the Company dated March 23, 2022 in effect as of the date hereof;

**“Cozamin Mine”** means the Cozamin underground, copper-silver mine located in the State of Zacatecas, Mexico;

**“distribution”** means a **“distribution”** or **“distribution to the public”** within the meaning of such terms under Canadian Securities Laws;

**“Documents Incorporated by Reference”** means the AIF, the Company Financial Statements and the management’s discussion and analysis relating thereto, and all material change reports of the Company (other than confidential reports), business acquisition reports and other documents issued by the Company, whether before or after the date of this Agreement, and filed with the Securities Commissions at or prior to the termination of the distribution, that are required by Canadian Securities Laws to be incorporated by reference in a short form prospectus, whether deemed or otherwise;

**“Environmental Laws”** means any Law, permit, license, registration, consent, certificate, approval or authorization pertaining to the protection or conservation of the natural environment, the protection or preservation of wildlife or fishery resources or the public, the undertaking of mineral resource exploration, extraction or processing operations and the decommissioning or closure of such operations, including the reclamation, remediation, rehabilitation and restoration of mining properties and of the natural environment. For greater certainty, a Law pertaining to the protection or conservation of the natural environment shall include all such Laws relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, transport, labeling, handling, discharge, release, clean-up, containment or removal of any Regulated Substance or otherwise relating to a condition or occurrence which may affect adversely the state, quality or use of soil, water, air, vegetation, fish life, wildlife or property or result in damage or risk to the life, health, safety, welfare or comfort of fish life, wildlife or human beings;

**“Environmental Orders”** means any written directive, Order, investigation, proceeding or letter from any Governmental Authority, relating to non-compliance with or breach of any reclamation obligation or Environmental Law;

**“Governmental Authorities”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law, rule or regulation-making organizations or entities, including aboriginal and Inuit organizations or entities: (a) having jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

**“Indemnified Parties”** means any one or more of (i) the Underwriter Indemnified Parties; (ii) the Company Indemnified Parties or (iii) the Selling Shareholders Indemnified Parties, as the context may require;

**“Indigenous Group”** means any first nations, Métis and/or indigenous and/or aboriginal person(s), tribe(s) and/or band(s) of Canada, the United States, Mexico or Chile;

**“Indigenous Group Claims”** means any written claims, assertions or demands, whether proven or unproven, made by any Indigenous Group to the Company or a Governmental Authority, or any representatives thereof, in respect of asserted or

proven aboriginal rights, aboriginal title, treaty rights or any other aboriginal interest in or to all or any portion of a Project or the Project Real Property;

**“Laws”** means all laws, statutes, regulations, by-laws, statutory rules, orders, ordinances, protocols, codes, guidelines, notices, directions (including all Applicable Canadian Securities Laws, United States federal and state securities laws and Environmental Laws), and terms and conditions of any grant of approval, permission, authority or license of any court, Governmental Authorities, statutory body or self-regulatory authority (including the TSX) applicable to the Company;

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature, or any other arrangement or condition which, in substance, secures payment or performance of an obligation;

**“Mantos Blancos Mine”** means the Mantos Blancos copper-silver mine located in Antofagasta Region, Chile;

**“Mantoverde Mine”** means the Mantoverde copper-gold mine, located in the Atacama Region, Chile;

**“Marketing Materials”** has the meaning ascribed thereto in NI 41-101;

**“material adverse effect”** or **“material adverse change”** means any change (including a decision to implement a change made by the board of directors or by senior management who believe that confirmation of the decision by the board of directors is probable), effect, event, occurrence, circumstance, violation or inaccuracy, as the case may be, that has or would reasonably be expected to: (i) have a material adverse effect on the business, assets, properties, affairs, liabilities (absolute, accrued, contingent or otherwise), capitalization, condition (financial or otherwise), results of operations, cash flows, control, management or prospects of the Company and the Subsidiaries (on a consolidated basis); or (ii) result in any Offering Document containing a misrepresentation;

**“NI 33-105”** means National Instrument 33-105 – *Underwriting Conflicts* of the Canadian Securities Administrators and includes, without limitation, any successor national instrument and companion policy to National Instrument 33-105;

**“NI 41-101”** means National Instrument 41-101 – *General Prospectus Requirements* of the Canadian Securities Administrators;

**“NI 43-101”** means National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* of the Canadian Securities Administrators;

**“NI 44-101”** means National Instrument 44-101 – *Short Form Prospectus Distributions* of the Canadian Securities Administrators;

**“NI 44-102”** means National Instrument 44-101 – *Shelf Distributions* of the Canadian Securities Administrators;

**“Offered Shares”** has the meaning ascribed thereto above;

**“Offering”** has the meaning ascribed thereto above;

**“Offering Documents”** means the Prospectus and any Supplementary Material;

**“Offering Jurisdictions”** means the Qualifying Jurisdictions, the United States and the Other Jurisdictions;

**“Option Closing Date”** has the meaning ascribed thereto above;

**“Option Closing Time”** means 8:30 a.m. (Toronto time) on the Option Closing Date, or such other time on the Option Closing Date as the Company, the Selling Shareholders and the Joint Bookrunners, on behalf of the Underwriters, may mutually agree upon in writing;

**“Option Expiry Date”** has the meaning ascribed thereto above;

**“Option Shares”** has the meaning ascribed thereto above;

**“Order”** means any order (including any judicial or administrative order and the terms of any administrative consent), judgment, injunction, decision, decree, ruling or award of any Governmental Authority;

**“Passport System”** has the meaning ascribed thereto above;

**“Permits”** means all material permits, licenses, approvals, certificates, qualifications, consents, certificates of approval, rights, privileges or franchises, registrations, Orders and exemptions, and all other material authorizations by any Governmental Authority, including any material municipal or other approvals required to be granted before a Governmental Authority, issued, conferred or otherwise granted to or held by the Company in connection with the Projects and the operations conducted thereon;

**“Person”** means any individual, partnership, joint venture, sole proprietorship, company or corporation, trust, trustee, unincorporated organization, a government or an agency or political subdivision thereof;

**“Pinto Valley Mine”** means the Pinto Valley open-pit, copper mine located in Arizona, United States;

**“Projects”** means, collectively, all properties, assets and other rights (including, without limitation, with respect to electricity, water, access and land), whether real or personal, tangible or intangible, now owned or leased or hereafter acquired by or for the benefit of the Company or its Subsidiary which assets are used or form part of the project for the mining operations in respect of the Mantoverde Mine, the Mantos

Blancos Mine, the Pinto Valley Mine, the Cozamin Mine and the Santo Domingo Project, and **“Project”** means any one of such Projects;

**“Project Properties”** means, collectively, all of the property, assets, undertaking and rights of the Company and its Subsidiaries in and relating to the Projects, whether now owned or existing or hereafter acquired or arising, including real property, personal property and mineral interests, and specifically including, but not limited to: (i) the Project Real Property; (ii) all accounts, instruments, chattel paper, deposit accounts, documents, intangibles, goods (including inventory, equipment and fixtures), money, letter of credit rights, supporting obligations, claims, causes of action and other legal rights and investment property; (iii) all products, proceeds (including proceeds of proceeds), rents and profits of the foregoing; and (iv) all books and records of the Company and its Subsidiaries related to any of the foregoing;

**“Project Real Property”** means, collectively, all real property interests, all mineral claims, mineral leases and other mineral rights, mineral claims and interests, and all surface access rights held by the Company or its Subsidiaries relating to the Projects, and all buildings, structures, improvements, appurtenances and fixtures thereon or attached thereto, whether created privately or by the action of any Governmental Authority. **“Project Real Property”** shall also include any term extension, renewal, replacement, conversion or substitution of any such real property interests, mineral claims, mineral leases, mineral rights, mineral claims or interests, and surface access rights, owned or in respect of which an interest is held, directly or indirectly, by the Company or its Subsidiaries at any time during the term of this Agreement, whether or not such ownership or interest is held continuously;

**“Prospectus”** means the Shelf Prospectus, as supplemented by the Prospectus Supplement, as may be amended by any prospectus amendment from time to time, together with all documents and information incorporated therein by reference relating to the qualification for distribution of the Offered Shares under the Applicable Securities Laws in all of the Offering Jurisdictions through the Underwriters;

**“Prospectus Supplement”** means the prospectus supplement of the Company dated February 5, 2024, which, together with the Shelf Prospectus, will qualify the distribution of the Offered Shares in each of the Qualifying Jurisdictions, as contemplated by NI 44-102;

**“Qualification Deadline”** has the meaning ascribed thereto in paragraph 2.2.1;

**“Qualified Institutional Buyer”** means a “qualified institutional buyer” as that term is defined in Rule 144A under the U.S. Securities Act;

**“Qualifying Jurisdictions”** means all of the provinces and territories of Canada, other than Québec;

**“Registration Rights Agreement”** means the Registration and Board Nomination Rights Agreement dated March 23, 2022 between the Company and the Selling Shareholders;



**“Regulated Substance”** means any pollutants, contaminants, chemicals, industrial, toxic, hazardous or noxious substances or wastes or any other materials or substances, which are now or hereafter prohibited, controlled, prescribed or regulated by any Governmental Authority, or the presence and/or quantity of which now or hereafter requires reporting, monitoring, investigation, removal or remediation by any Governmental Authority or legal requirements including, but not limited to:

- (a) any petroleum or petroleum compound (refined or crude), natural gas, natural gas liquids or related hydrocarbons, flammable substance, explosive, radioactive material or any other material or pollutant which poses a hazard or potential hazard to the environment or Persons;
- (b) asbestos or any asbestos-containing material of any kind of character, any materials or substances containing polychlorinated biphenyls or urea formaldehyde insulation;
- (c) any materials or substances designated as a “hazardous waste,” “hazardous substance”, “toxic pollutant” or “contaminant” under any Environmental Law; and
- (d) any materials or substances that are toxic, explosive, corrosive, flammable, ignitable, infectious, radioactive, reactive, carcinogenic, mutagenic or otherwise hazardous;

**“Santo Domingo Project”** means the large-scale copper-iron-gold-cobalt Santo Domingo development project located in the Atacama Region, Chile;

**“Secondary Offering”** has the meaning ascribed thereto above;

**“Secondary Shares”** has the meaning ascribed thereto above;

**“Securities Commissions”** means the applicable securities commission or securities regulatory authority in each of the Qualifying Jurisdictions;

**“Selling Firm(s)”** has the meaning ascribed thereto in paragraph 3.2;

**“Selling Shareholders”** means, collectively, Orion Fund JV Limited, Orion Mine Finance Fund II LP, and Orion Mine Finance (Master) Fund I-A LP, and **“Selling Shareholder”** means any one of them;

**“Selling Shareholder Indemnified Parties”** has the meaning ascribed thereto in paragraph 11.3;

**“Selling Shareholders’ Information”** means the information and statements contained in the first paragraph of the face page of the Prospectus Supplement, the information and statements contained under the heading “Selling Shareholders” in the Prospectus Supplement and the information and statements contained under the heading “Plan of Distribution” in the Prospectus Supplement, as each may be carried

forward into the U.S. Placement Memorandum or any Supplementary Material, together with any other information and statements contained in the Offering Documents, in each case relating to the Selling Shareholders;

**“Shelf Prospectus”** means the short form base shelf prospectus of the Company dated March 1, 2023, including the documents incorporated by reference therein;

**“Subsidiaries”** means, individually or collectively, as the context requires, Capstone Mining Corp., Mantos Copper (UK) No.1 Limited and each of their respective “subsidiaries” as defined in section 1.2 of this Agreement;

**“Supplementary Material”** means, collectively, (i) any amendment or supplement to the Prospectus, (ii) any amendment or supplement to the U.S. Placement Memorandum, (iii) any amended or supplemented prospectus or ancillary materials that may be filed by or on behalf of the Company under Applicable Securities Laws relating to the qualification for distribution of the Offered Shares, (iv) any supplemental or additional or ancillary material, information, evidence, returns, reports, applications, statements or documents related to the Prospectus, the U.S. Placement Memorandum or any amendments thereto, or (v) any other document that is delivered or intended to be delivered to a purchaser of Offered Shares;

**“Taxes”** has the meaning ascribed thereto in paragraph 8.1.23;

**“Technical Reports”** means, collectively, (i) the report entitled “NI 43-101 Technical Report on the Cozamin Mine, Zacatecas, Mexico”, dated May 2, 2023 with an effective date of January 1, 2023; (ii) the report entitled “Santo Domingo Project, Region III, Chile, NI 43-101 Technical Report”, with an effective date of February 19, 2020; (iii) the report entitled “NI 43-101 Technical Report on the Pinto Valley Mine, Arizona, USA”, dated June 11, 2021 with an effective date of March 31, 2021; (iv) the report entitled “Mantos Blancos Mine NI 43-101 Technical Report Antofagasta/Región de Antofagasta, Chile”, dated January 5, 2022 with an effective date of November 29, 2021; and (v) the report entitled “Mantoverde Mine and Mantoverde Development Project NI 43-101 Technical Report Chañaral/Región de Atacama, Chile”, dated January 5, 2022 with an effective date of November 29, 2021, in each case as filed on SEDAR+ on the Company’s profile;

**“Template Version”** has the meaning ascribed thereto in NI 41-102;

**“Transaction Documents”** has the meaning ascribed thereto in paragraph 8.1.10;

**“Treasury Offering”** has the meaning ascribed thereto above;

**“Treasury Shares”** has the meaning ascribed thereto above, and shall include, for greater certainty, any Option Shares;

**“TSX”** means the Toronto Stock Exchange;

**“Underwriter Indemnified Parties”** has the meaning ascribed thereto in paragraph 11.1;

**“Underwriters”** has the meaning ascribed thereto above;

**“Underwriters’ Disclosure”** means disclosure relating solely to the Underwriters and any other disclosure provided to the Company and the Selling Shareholders by or on behalf of the Underwriters for inclusion in the applicable disclosure document;

**“Underwriting Fee”** has the meaning ascribed thereto above;

**“U.S. Affiliate”** means the U.S. registered broker-dealer affiliate of an Underwriter that is referenced in the U.S. Placement Memorandum;

**“U.S. Exchange Act”** means the United States Securities Exchange Act of 1934, as amended;

**“U.S. Placement Memorandum”** means the private placement memorandum of the Company, including the Prospectus and the Documents Incorporated by Reference, and any amendment or supplement thereto, relating to the offer and sale of the Offered Shares in the United States;

**“U.S. Securities Act”** means the United States Securities Act of 1933, as amended; and

**“U.S. Securities Laws”** means all applicable securities laws in the United States, including without limitation, the U.S. Securities Act, the U.S. Exchange Act and the rules and regulations promulgated thereunder, and any applicable state securities laws.

1.2 Whenever used in this Agreement, the terms “affiliate”, “associate”, “distribution”, “misrepresentation”, “material fact”, “material change” and “senior officer” shall have the meanings given to such terms under Canadian Securities Laws, and the term “subsidiary” shall have the meaning given to such term in the *Business Corporations Act* (British Columbia).

1.3 Whenever used in this Agreement, words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender.

1.4 All references to monetary amounts in this Agreement are to the lawful money of Canada.

## 2. Filing of the Prospectus and Qualification for Distribution

2.1 The Company represents and warrants that:

- 2.1.1 it is qualified to file a short form prospectus under NI 44-101 and is qualified to use the Shelf Procedures under NI 44-102 for the distribution of the Offered Shares; and
- 2.1.2 the Company has fulfilled all requirements to be fulfilled by the Company, including the filing of all continuous disclosure materials, required to be filed pursuant to Canadian Securities Laws, but excluding the preparation and filing of the Prospectus Supplement, to enable the Offered Shares to be offered for sale and sold to the public in each of the Qualifying Jurisdictions under the Prospectus through registrants duly registered under an appropriate category who have complied with the relevant provisions of Applicable Securities Laws.

2.2 The Company shall:

- 2.2.1 file the Prospectus Supplement and all other documents required under Canadian Securities Laws with the Securities Commissions not later than 11:00 p.m. (Toronto time) on the date hereof (the “**Qualification Deadline**”) and otherwise fulfill all legal requirements to enable the Offered Shares to be offered and sold to the public in each of the Qualifying Jurisdictions through the Underwriters or any other investment dealer or broker registered in the appropriate category in the applicable Qualifying Jurisdiction; and
- 2.2.2 until the date on which the distribution of the Offered Shares is completed, the Company and the Selling Shareholders will promptly take, or cause to be taken, all additional steps and proceedings that may from time to time be required under Canadian Securities Laws to continue to qualify the distribution of the Offered Shares or, in the event that the Offered Shares or any of them, have, for any reason, ceased to so qualify, to so qualify again such securities, as applicable, for distribution.

## 3. Covenants of the Underwriters

The Underwriters severally, and not jointly or jointly and severally, covenant with the Company and the Selling Shareholders that:

- 3.1 except as disclosed in the Prospectus, neither the Company nor the Selling Shareholders is a “related issuer” or “connected issuer” of any Underwriter; and each Underwriter, any “related issuer” of such Underwriter or the directors, officers or partners of such Underwriter or of any “related issuer” of such Underwriter is not a person to which the Company, the Selling Shareholders or any “related issuer” of the Company or Selling Shareholders, or with which the

Company, the Selling Shareholders or any “related issuer” of the Company or Selling Shareholders has any other relationship for which disclosure in the Prospectus is required under NI 33-105. For the purposes of this paragraph 3.1, “related issuer” and “connected issuer” have the meanings ascribed thereto in NI 33-105;

- 3.2 (a) they will offer the Offered Shares for sale to the public only in the Qualifying Jurisdictions on behalf of the Company and the Selling Shareholders, directly and through other investment dealers and brokers (the Underwriters, together with such other investment dealers and brokers, are referred to herein as the “**Selling Firms**”), only as permitted by (i) Canadian Securities Laws, (ii) subject as hereinafter provided, in the United States only as permitted by the laws of the United States in a manner which will not require the Company or the Selling Shareholders to file a prospectus, registration statement, offering memorandum or similar document, upon the terms and conditions set forth in the Prospectus and the U.S. Placement Memorandum and in this Agreement, and (iii) in the Other Jurisdictions only as permitted by the laws of such Other Jurisdictions in a manner which will not require the Company or the Selling Shareholders to file a prospectus, registration statement or similar document; and (b) they shall ensure that each Selling Firm, prior to its appointment as such, has delivered to the Underwriters a representation to the effect that neither the Company nor the Selling Shareholders is a “related issuer” of such Selling Firm, and that each Selling Firm, any “related issuer” of such Selling Firm and the directors, officers or partners of such Selling Firm and of any “related issuer” of such Selling Firm, is not a person to which the Company, the Selling Shareholders or any “related issuer” of the Company or Selling Shareholders owes any indebtedness or with which the Company, the Selling Shareholders or any “related issuer” of the Company or Selling Shareholders has any other relationship, unless the Underwriters, the Selling Shareholders and the Company have agreed that the Company or Selling Shareholders is not a “related issuer” or a “connected issuer” of such Selling Firm, as applicable. For the purposes of the preceding sentence, “related issuer” and “connected issuer” have the meanings ascribed thereto in NI 33-105; for the purposes of this paragraph 3.2, the Underwriters shall be entitled to assume that the Offered Shares are qualified for distribution in any province or territory of Canada (other than Québec) where a decision document evidencing the receipt (and deemed receipt) of the Securities Commissions in each of the Qualifying Jurisdictions (under the Passport System) for the Shelf Prospectus shall have been obtained from the Securities Commissions following the filing of the Shelf Prospectus.

Any offer of Offered Shares in the United States of America will be made pursuant to the exemption from registration provided by Rule 144A under the U.S. Securities Act and in accordance with the U.S. Securities Act and with Schedule “A” attached hereto, and the Underwriters’ representations, warranties and covenants contained therein are hereby incorporated by reference herein and made a part hereof.

Any person in the United States of America who agrees to purchase Offered Shares in accordance with Schedule “A” attached hereto will be provided with a copy of the Prospectus, together with the U.S. Placement Memorandum in a form to be mutually agreed upon by the Company, the Selling Shareholders and the Underwriters.

For greater certainty, the Underwriters shall be restricted from: (i) offering or placing any Offered Shares into Australia, and (ii) market-making or liquidity-inducing activities in respect of the listing and quotation of the CDIs on the ASX;

- 3.3 from the date of commencement of distribution of the Offered Shares to the date such distribution ceases, they will: (i) not provide to any potential investors of the Offered Shares any Marketing Materials in respect of the Offered Shares that are or would be required to be incorporated by reference into the Prospectus without the prior approval by the Company and the Selling Shareholders of the Template Version of such Marketing Materials, such approval to be evidenced by a written agreement between the Company, the Selling Shareholders and RBC; provided, for greater certainty, that the Bought Deal Marketing Materials were approved by the Company, the Selling Shareholders and RBC pursuant to a written agreement on February 1, 2024; and (ii) provide a copy of the Prospectus or any Supplementary Material to each potential investor of the Offered Shares who receives any Marketing Materials referred to in paragraph 3.3(i);
- 3.4 RBC, on behalf of the Underwriters, will notify the Selling Shareholders and the Company when, in its opinion, the distribution of the Offered Shares shall have ceased and provide a breakdown of the principal amount of the Offered Shares distributed in each Offering Jurisdiction where such breakdown is required for the purpose of calculating fees payable to a Securities Commission; provided, however, that such breakdown shall be provided no later than 30 days following the Closing Date or the Option Closing Date (if applicable);
- 3.5 they will not make any representations or warranties with respect to the Company, the Selling Shareholders or the Offered Shares other than as set forth in this Agreement, or the Prospectus, the U.S. Placement Memorandum or any Supplementary Material or otherwise with the prior approval of the Company and the Selling Shareholders, as applicable; and
- 3.6 provided that they are satisfied, in the Underwriters’ sole discretion, acting reasonably, that it is responsible for the Underwriters to do so, the Underwriters will execute and deliver to the Company the certificate required to be executed by them under Canadian Securities Laws in connection with the Prospectus and any Supplementary Material.

#### 4. Covenants of the Company

The Company covenants and agrees with the Underwriters that:

- 4.1 the Treasury Shares will be, upon issuance, duly and validly authorized for issuance, and such Treasury Shares shall have attributes corresponding in all material respects to the descriptions thereof in this Agreement and the Prospectus and the U.S. Placement Memorandum;
- 4.2 the Secondary Shares have been duly and validly authorized and issued, and such Secondary Shares have attributes corresponding in all material respects to the descriptions thereof in this Agreement and the Prospectus and the U.S. Placement Memorandum;
- 4.3 (a) it shall fulfil to the satisfaction of the Underwriters, acting reasonably, all legal requirements to be fulfilled by it to enable the Offered Shares to be offered for sale and sold to the public by or through the Underwriters and other investment dealers and brokers who comply with all Canadian Securities Laws in each of the Qualifying Jurisdictions; and (b) it shall use its reasonable best efforts to fulfil all legal requirements to permit the distribution of the Offered Shares in each of the Qualifying Jurisdictions as soon as possible but in any event not later than the Qualification Deadline; such fulfilment shall include, without limiting the generality of the foregoing, compliance with all Canadian Securities Laws including, without limitation, compliance with all requirements with respect to and the preparation and filing of the Prospectus in each of the Qualifying Jurisdictions required under Canadian Securities Laws;
- 4.4 it shall allow and assist the Underwriters to participate fully in the preparation of the Prospectus, the U.S. Placement Memorandum and any Supplementary Material and shall allow the Underwriters to conduct all “due diligence” investigations which the Underwriters may reasonably require to fulfil their obligations as Underwriters and to enable the Underwriters responsibly to execute any certificate required to be executed by the Underwriters in such documentation;
- 4.5 it shall comply with section 57 of the *Securities Act* (Ontario) and with the other comparable provisions of Canadian Securities Laws in each of the Qualifying Jurisdictions and, during the period from the date hereof to the completion of the distribution of the Offered Shares, shall promptly inform the Underwriters and the Selling Shareholders in writing of the full particulars of any material change (for greater certainty, material in the context of all assets of the Company considered together), actual, anticipated or threatened, in the operating, financial or physical condition of the Projects or the Project Properties, or any of them, or in the financial condition, assets, liabilities, business, affairs or operations of the Company or of any change in any material fact contained or referred to in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material thereto, and of the existence of

any material fact which is, or may be, of such a nature as to render the Prospectus, the U.S. Placement Memorandum or any Supplementary Material thereto, untrue, false or misleading in a material respect or result in a misrepresentation. The Company shall, to the satisfaction of the Underwriters and their counsel, acting reasonably, and with notice to the Selling Shareholders and its counsel, promptly comply with all applicable filing and other requirements under Canadian Securities Laws in the Qualifying Jurisdictions as a result of such change. The Company shall, in good faith, first discuss with the Underwriters and the Selling Shareholders any change in circumstances (actual or proposed within the Company's knowledge) which is of such a nature that there is reasonable doubt whether notice need be given to the Underwriters and the Selling Shareholders pursuant to this paragraph 4.5 and, in any event, prior to making any filing referred to in this paragraph 4.5. For greater certainty, it is understood and agreed that if the Underwriters determine, after consultation with the Company and the Selling Shareholders, that a material change or change in a material fact has occurred during the period from the date hereof to the completion of the distribution of the Offered Shares which makes untrue or misleading any statement of a material fact contained in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material thereto, or which may result in a misrepresentation, the Company will:

4.5.1 prepare and file promptly at the request of the Underwriters any Supplementary Material which in their opinion, acting reasonably, may be necessary or advisable; and

4.5.2 contemporaneously with filing the Supplementary Material under the applicable laws of the Qualifying Jurisdictions, deliver to the Underwriters and the Selling Shareholders:

4.5.2.1 a copy of the Supplementary Material, signed as required by Canadian Securities Laws;

4.5.2.2 a signed copy of all documents relating to the proposed distribution of the Offered Shares and filed with the Supplementary Material under Canadian Securities Laws; and

4.5.2.3 such other documents as the Underwriters shall reasonably require;

4.6 it will use the net proceeds from the Offering as described in, and subject to the qualifications set out in, the Offering Documents; and

4.7 it will not provide to any potential investors of the Offered Shares any Marketing Materials in respect of the Offered Shares other than the Bought Deal Marketing Materials, other than in accordance with section 3.3, without the



prior approval by the Joint Bookrunners of the Template Version of such Marketing Materials.

## **5. Covenants of the Selling Shareholders**

Each of the Selling Shareholders covenants and agrees with the Underwriters that:

- 5.1 it shall use its reasonable commercial efforts to promptly do, make, execute, deliver or cause to be done, made, executed or delivered, all such acts, documents and things the Underwriters may reasonably require of it from time to time for the purpose of giving effect to this Agreement and the transactions contemplated by the Prospectus and the U.S. Placement Memorandum and shall take all such steps as may be reasonably within its power to implement the provisions of this Agreement and the transactions contemplated by the Prospectus and the U.S. Placement Memorandum which are applicable to the Selling Shareholders; and
- 5.2 it shall allow and reasonably assist the Underwriters in its capacity as a Selling Shareholder to participate fully in the preparation of the Prospectus, the U.S. Placement Memorandum and any Supplementary Material and shall reasonably assist the Underwriters to conduct all “due diligence” investigations which the Underwriters may reasonably require to fulfil their obligations as Underwriters and to enable the Underwriters responsibly to execute any certificate required to be executed by the Underwriters in such documentation.

## **6. Deliveries**

- 6.1 The Company shall deliver without charge to the Underwriters, as soon as practicable (and in any event within one (1) Business Day in Toronto and two (2) Business Days outside of Toronto) of the date of the filing of the Prospectus, and thereafter from time to time during the distribution of the Offered Shares, in such cities in the Offering Jurisdictions as the Underwriters shall notify the Company, as many commercial copies of the Prospectus and the U.S. Placement Memorandum as the Underwriters may request for the purposes contemplated by the Applicable Securities Laws. The Company shall similarly cause to be delivered to the Underwriters, in such cities in the Offering Jurisdictions as the Underwriters may request, commercial copies of any Supplementary Material required or intended to be delivered to purchasers or prospective purchasers of the Offered Shares. The Company shall also cause to be delivered to the Selling Shareholders as many commercial copies of the

Prospectus and the U.S. Placement Memorandum as the Selling Shareholders may request.

- 6.2 The Company shall deliver to the Underwriters (without charge) and the Selling Shareholders contemporaneously with, or prior to, the filing of the Prospectus Supplement, as the case may be:

6.2.1 a copy of the Prospectus Supplement, including copies of any Documents Incorporated by Reference therein which have not previously been delivered to the Underwriters and the Selling Shareholders (provided that any documents incorporated by reference therein which is publicly available on SEDAR+ shall be deemed to be delivered to the Underwriters and the Selling Shareholders);

6.2.2 a copy of any other document filed with, or delivered to, the Securities Commissions by the Company under Canadian Securities Laws in connection with the Offering;

6.2.3 a “long-form” comfort letter dated the date of the Prospectus Supplement in form and substance acceptable to the Underwriters, addressed to the Underwriters and the board of directors of the Company, from the Auditors, and based on a review completed up to two (2) Business Days prior to the date of the Prospectus Supplement, with respect to financial and accounting information relating to, among other things, the Company Financial Statements, as the case may be, contained in the Prospectus or incorporated by reference therein, which letter shall be in addition to the auditors’ reports contained in the Prospectus; and

6.2.4 opinions, comfort letters and other documents substantially similar to those referred to in this section of this Agreement will, as applicable, be delivered to the Underwriters, the Selling Shareholders and the Company, and their respective counsel, with respect to any Supplementary Material, contemporaneously with, or prior to the filing or delivery of, any Supplementary Material.

## **7. Representations and Warranties – Prospectus**

- 7.1 The delivery to the Underwriters of the documents referred to in paragraph 6.1 hereof shall constitute the representation and warranty of the Company to the Underwriters that each such document at the time of its respective delivery fully complied with the requirements of Canadian Securities Laws pursuant to which it was or is prepared (if any), and, as applicable, filed (if any) and that all the information and statements contained therein (except information and statements relating solely to the Underwriters’ Disclosure and the Selling Shareholders’ Information) are, at the respective dates of delivery thereof, true and correct, contain no misrepresentation and constitute full, true and plain

disclosure of all material facts relating to the Company and its Subsidiaries, taken together, and the Offered Shares as required by Canadian Securities Laws.

- 7.2 The delivery to the Underwriters of the documents referred to in paragraph 6.1 hereof shall constitute the representation and warranty of the Selling Shareholders to the Underwriters that each such document at the time of its respective delivery fully complied with the requirements of Canadian Securities Laws pursuant to which it was or is prepared (if any), but only insofar as it relates to the Selling Shareholders' Information, and, as applicable, filed (if any) and that all Selling Shareholders' Information contained therein is, at the respective dates of delivery thereof, true and correct, contain no misrepresentation and constitute full, true and plain disclosure of all material facts relating to the Selling Shareholders' Information as required by Canadian Securities Laws.
- 7.3 Each of the Company and the Selling Shareholders consents to the use by the Underwriters of the documents referred to in paragraph 6.1 in connection with the distribution of the Offered Shares in the Offering Jurisdictions in compliance with the provisions of this Agreement.
- 7.4 The Company, the Selling Shareholders and the Underwriters acknowledge that the Company is required by Canadian Securities Laws to prepare and file an amendment to the Prospectus at any time prior to the completion of the distribution of the Offered Shares, if the Prospectus (prior to the amendment) contains a misrepresentation. The Company will promptly prepare and file with the Securities Commissions in the Qualifying Jurisdictions any amendment or supplement thereto which, in the opinion of the Underwriters, the Selling Shareholders and the Company, each acting reasonably, may be necessary or advisable to correct such misrepresentation.

## **8. Representations and Warranties of the Company**

- 8.1 The Company represents and warrants to the Underwriters and the Selling Shareholders, and acknowledges that the Underwriters and the Selling Shareholders are relying upon such representations and warranties in completing the transactions contemplated under this Agreement, that:
  - 8.1.1 the Company is a company existing under the laws of the Province of British Columbia, has all requisite power and authority to carry on its business as now conducted and as presently proposed to be conducted and to own or lease and to operate its properties and assets;
  - 8.1.2 each Subsidiary: (i) is duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation, and has all requisite power, capacity and authority to carry on its business as it is now being conducted and as proposed to be conducted, and (ii) is beneficially owned and controlled by the Company as described in the

Prospectus, free and clear of all Liens, in all material respects, except as described in the Prospectus;

- 8.1.3 the Company and each Subsidiary is duly registered to do business and is in good standing in each jurisdiction in which the character of its properties, owned or leased, or the nature of its activities make such registration necessary;
- 8.1.4 the Company is a reporting issuer or the equivalent thereof in good standing under Canadian Securities Laws of each of the Qualifying Jurisdictions and the Province of Québec and has no reasonable grounds to believe that it will not continue to be a “reporting issuer” or the equivalent thereof in good standing under the Canadian Securities Laws of each of the Qualifying Jurisdictions and the Province of Québec which recognize this concept up to and following the Closing Time;
- 8.1.5 except as has been publicly disclosed, since December 31, 2022, there has been no material adverse change, actual, contemplated or, to the best of the Company’s knowledge, threatened, in the business, affairs, operations, assets, liabilities (contingent or otherwise), capital or ownership of the Company or the Subsidiaries;
- 8.1.6 the Company is eligible to file a short form prospectus under NI 44-101 in each of the Qualifying Jurisdictions and is qualified to use the Shelf Procedures and there are no reports or information that in accordance with the requirements of Canadian Securities Laws must be made publicly available in connection with the Offering as at the date hereof that have not been made publicly available;
- 8.1.7 the Company and each of the Subsidiaries has conducted and is conducting its business in compliance in all material respects with all applicable laws, rules, regulations, licences and permits and is licensed, registered or qualified and has all necessary licences and permits in all jurisdictions in which it carries on business to enable its business as now conducted to be carried on and as presently proposed to be conducted and to enable its assets to be owned or to be leased and to be operated, except where the failure to obtain such licences and permits would not have a material adverse effect on the ability to carry out any of the foregoing, and all such licences, registrations, qualifications and permits are valid and existing and in good standing and none of them contains any term, provision, condition or limitation which has a material adverse effect on the operation of the business of the Company or the Subsidiaries as now conducted or proposed to be conducted;
- 8.1.8 except as set forth in the Prospectus or any Supplementary Material, the Company and the Subsidiaries, as applicable, are the beneficial owner of the Projects or its interests therein and any and all agreements

pursuant to which the Company or the Subsidiaries, as applicable, hold any such interests in the Projects are valid and subsisting agreements in full force and effect, enforceable in accordance with their respective terms; the Company and each the Subsidiaries, as applicable, is not in default of any of the provisions of any such agreements, which default may be material to its ability to maintain its beneficial ownership or its interest in the Projects or which may have a material adverse effect upon the Projects or upon the operation of the business of the Company or the Subsidiaries as now conducted or proposed to be conducted in respect of the Projects, nor has any such default been alleged and the Projects are in good standing under the applicable statutes and regulations of the jurisdictions in which they are situate; all leases pursuant to which the Company derives its interests in the Projects are in good standing and there has been no material default under any such leases (except for minor and temporary arrears and other similar temporary defaults which occur in the ordinary course of business and which would not have a material adverse effect) and all realty or other property taxes required to be paid with respect to the Projects to the date hereof have been paid;

8.1.9 all operations of the Company and the Subsidiaries and, to the knowledge of the Company, all operations by third parties at, and in respect of, the Projects, have been conducted in accordance with good mining industry practices and in compliance with all Laws applicable to the Company and each of the Subsidiaries in each jurisdiction in which it carries on its business (except where the failure to so conduct operations would not or is not likely to have a material adverse effect). Except as disclosed in the Prospectus, the Company or the Subsidiaries hold, directly or indirectly, all Permits in all jurisdictions in which they carry on business, which are required at the current time and are necessary or desirable to operate the assets and properties of the Company and the Subsidiaries, including the Projects, and to carry on the business of the Company and the Subsidiaries, as now conducted and as presently proposed to be conducted in the near to intermediate term, and all such Permits are valid and existing and in good standing except where the failure to hold such Permits in the aggregate, would not or would not reasonably be expected to have a material adverse effect. None of such Permits contains any burdensome term, provision, condition or limitation, which has or is likely to have any material adverse effect, and the Company and the Subsidiaries have not received any notice of proceedings relating to the revocation or modification of any Permit which, individually or in the aggregate, would reasonably be expected to have a material adverse effect;

8.1.10 the Company is not in default or in breach of, and the execution and delivery of this Agreement and all documents executed or delivered, or to be executed or delivered, pursuant hereto (collectively, the **“Transaction Documents”**), the performance and compliance with the

terms of this Agreement and the other Transaction Documents, and the issuance and sale of the Treasury Shares and the Option Shares will not result in any breach of, or be in conflict with or constitute a default under, any term or provision of the Constatting Documents, any resolution of the directors or shareholders of the Company or any mortgage, note, indenture, contract, agreement, written or oral, instrument, lease or other document to which the Company or the Subsidiaries are a party or by which the Company or the Subsidiaries is bound or any judgment, decree, order, statute, rule or regulation applicable to the Company or the Subsidiaries, except in each case, any breach or default which would not have a material adverse effect;

- 8.1.11 the Company has all requisite power and authority, and all corporate action has been taken by the Company: (i) to enter into this Agreement; (ii) to execute, deliver and file the Offering Documents, as applicable; and (iii) to carry out all the terms and provisions of this Agreement, including but not limited to the issuance and sale of the Treasury Shares and the grant of the Over-Allotment Option;
- 8.1.12 this Agreement and the other Transaction Documents have been or will be, as the case may be, duly executed and delivered by the Company and constitute or will constitute, as the case may be, when so executed and delivered legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, except where enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity when equitable remedies are sought;
- 8.1.13 the Company has not taken and will not take, directly or indirectly, any action which is designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Treasury Shares;
- 8.1.14 other than the Underwriters (or any Selling Firms) in respect of the Offering, there is no person acting or purporting to act at the request of the Company who is entitled to any brokerage, agency or other advisory or similar fee in connection with the transactions contemplated herein;
- 8.1.15 the Company is authorized to issue an unlimited number of Common Shares, of which 696,073,153 were issued and outstanding as at the close of business on February 2, 2024, as fully-paid and non-assessable Common Shares;
- 8.1.16 except for the Selling Shareholders and Hadrian Capital Partners Inc., to the knowledge of the Company, no other Person beneficially owns,

or exercises control or direction over, directly or indirectly, 10% or more of the outstanding Common Shares;

- 8.1.17 the Common Shares are listed on the TSX and the CDIs are listed on the ASX;
- 8.1.18 no order ceasing or suspending trading in the securities of the Company, prohibiting the sale of such securities or preventing or suspending the use of the Prospectus has been issued to the Company or its directors or officers and, to the knowledge of the Company, no investigations or proceedings for such purposes are pending or threatened;
- 8.1.19 the Company has no securities outstanding which are convertible into or exchangeable or exercisable for Common Shares and there are no outstanding options on or rights to subscribe for any of the unissued Common Shares except as described in the Prospectus;
- 8.1.20 other than as contemplated under the Registration Rights Agreement, there are no persons with registration rights or other similar rights granted by the Company to have any securities of the Company registered or qualified for distribution pursuant to any Canadian Securities Laws, U.S. Securities Laws or the laws, rules or regulations of any other country;
- 8.1.21 the Company Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior periods (except as disclosed in such financial statements) and present fairly the financial condition and position of the Company and the Subsidiaries (on a consolidated basis) as at their respective dates and such financial statements contain no misrepresentation;
- 8.1.22 all material agreements of the Company and the Subsidiaries (including but not limited to those related to material indebtedness), taken as a whole, are, in all material respects, valid, subsisting, in good standing and in full force and effect, enforceable in accordance with the terms thereof; and neither the Company, nor the Subsidiaries, nor, to the knowledge of the Company, any other party is in breach, violation or default of any material term, condition or covenant contained in any such material agreements and no event has occurred which the notice or lapse of time or both would constitute such a default, in any such case which breach, violation, default or event would reasonably be expected to have a material adverse effect;
- 8.1.23 (i) all material taxes (including income tax, capital tax, payroll taxes, employer health tax, workers' compensation payments, property taxes, custom and land transfer taxes), duties, royalties, levies, imposts,

assessments, deductions, charges or withholdings and all liabilities with respect thereto including any penalty and interest payable with respect thereto (collectively, “**Taxes**”) due and payable by the Company or the Subsidiaries have been paid; (ii) to the knowledge of the Company, no material examination of any tax return of the Company or of any of the Subsidiaries is currently in progress; and (iii) there are no material issues or disputes outstanding with any Governmental Authorities respecting any Taxes that have been paid, or may be payable, by the Company or any of the Subsidiaries, that would be expected to have a material adverse effect;

8.1.24 since December 31, 2022:

8.1.24.1 no dividends to holders of Common Shares have been declared or paid by the Company and no capital expenditures or commitments therefor have been made by the Company or the Subsidiaries, except in the ordinary course of business and which are not material,

8.1.24.2 the Company and each of the Subsidiaries has not incurred any obligation or liability, direct, contingent or otherwise, except in the ordinary course of business and which is not material, and

8.1.24.3 no transactions of a nature material to the Company or the Subsidiaries have been entered into by the Company or the Subsidiaries,

except, in each case, as disclosed in the Prospectus or any Supplementary Material thereto;

8.1.25 other than the Projects, the Company does not have any interests in mineral projects on a property material to the Company;

8.1.26 all mineral claims fees, maintenance fees, recording fees and taxes and all other material amounts have been paid when due and payable, and all other actions and all other obligations as are required to maintain the Project Properties in good standing have been taken and complied with;

8.1.27 the Company is in compliance in all material respects with the provisions of NI 43-101 and has filed all technical reports required thereby and there has been no change that would require the filing by the Company of a new technical report under NI 43-101. In addition, with respect to each news release issued, and any other documents constituting written disclosure for the purposes of NI 43-101, or filed, by or on behalf of the Company in respect of which any requirements of NI 43-101 applied, each such news release and document also complied with the requirements of NI 43-101;



- 8.1.28 each of the Technical Reports complied with the requirements of NI 43-101 at the time of filing thereof and each such Technical Report reasonably estimates the quantity of mineral resources and mineral reserves, as applicable, attributable to the Project to which each such Technical Report relates, evaluated as at the date stated therein based upon information available at the time each such Technical Report was prepared, and the Company made available to the authors of the Technical Reports, prior to the issuance thereof, for the purpose of preparing such reports, all information requested by them, and none of such information contained any misrepresentation (as defined under Canadian Securities Laws) at the time such information was so provided;
- 8.1.29 there is no new material scientific or technical information concerning the Projects that is not included in the Technical Report for such Project;
- 8.1.30 all technical information contained in the Prospectus has been reviewed by a “qualified person” as required under NI 43-101. All such information has been prepared in accordance with Canadian industry standards set forth in NI 43-101, and there have been no material changes to such information since the date of the document in which such information is contained, except as disclosed in the Prospectus. The Company has filed with the Securities Commissions each of the Technical Reports, and each of the Technical Reports is a current technical report for purposes of NI 43-101;
- 8.1.31
  - 8.1.31.1 to the knowledge of the Company, all of the material assumptions underlying the mineral resource and mineral reserve estimates, as applicable, in each of the Technical Reports were reasonable and appropriate at the time such assumptions were made and, as of the date hereof, each of the Technical Reports remains current and up to date; and
  - 8.1.31.2 the disclosure of the estimates of mineral resources and reserves in each of the Technical Reports comply with NI 43-101;
- 8.1.32 to the knowledge of the Company, no labour dispute (including any strike, lock-out or work slow-down or stoppage), complaint, grievance or other conflict with the current or former employees or consultants of the Company or the Subsidiaries currently exists or is pending, or to the knowledge of the Company, is threatened and the labour relations of the Company and the Subsidiaries which could have a material adverse effect.

- 8.1.33 there are no judgments unsatisfied against the Company or any of the Subsidiaries or, to the knowledge of the Company, any consent decrees or injunctions to which the Company or any of the Subsidiaries, or their assets or properties are subject, that, taken together, would have a material adverse effect;
- 8.1.34 other than as may be required under Applicable Securities Laws, no consent, approval, filing, authorization, order, registration or qualification of or with any court or Governmental Authority or body is required for the execution and delivery of this Agreement or the sale of the Offered Shares;
- 8.1.35 neither the Company, nor any of its Subsidiaries, have received notice that the Project Real Property or any portion of any Project is subject to any Indigenous Group Claims, and, to the knowledge of the Company and its Subsidiaries, there are no current, pending, threatened or imminent Indigenous Group Claims affecting the Project Real Property or any portion of any Project. The Company and its Subsidiaries have not entered into any written or oral agreements with any Indigenous Group to provide benefits, pecuniary or otherwise, with respect to any portion of any Project at any stage of development and the Company and its Subsidiaries have not offered any Indigenous Group any material benefits with respect to any Project at any stage of development;
- 8.1.36 there is no legal or governmental action, proceeding or investigation pending or, to the knowledge of the Company, threatened, which would question the validity of the sale of the Offered Shares or the validity of any action taken or to be taken by the Company in connection with this Agreement;
- 8.1.37 neither the Company nor any Subsidiary has failed to report to the proper federal, provincial, municipal or other political subdivision, government, department, commission, board, bureau, agency or instrumentality, whether domestic or foreign the occurrence of any event which is required to be so reported by any Environmental Laws;
- 8.1.38 the Company and the Subsidiaries hold all Permits required to be held by it under any Environmental Laws in connection with the current operation of its business and the ownership and use of its assets, all such Permits are in full force and effect, and except for notifications and conditions of general application to assets of the type owned by the Company and the Subsidiaries, neither the Company nor any of the Subsidiaries has received any notification pursuant to any Environmental Laws that any work, repairs, constructions or capital expenditures are required to be made by it as a condition of continued compliance with any Environmental Laws, or any Permit issued pursuant thereto, or that any Permit referred to above is about to be

reviewed, made subject to limitation or conditions, revoked, withdrawn or terminated;

- 8.1.39 the real property leased or occupied in connection with the business or the Projects, including the Project Properties, is not being used to, and to the knowledge of the Company has not been used to, produce, generate, manufacture, treat, store, handle, transport or dispose of any Regulated Substances, except in compliance in all material respects with Environmental Laws;
- 8.1.40 there are no outstanding Environmental Orders relating to the Projects or the Project Properties which have not been complied with, nor are there any outstanding Environmental Orders alleging a violation of Environmental Laws or Permits in respect of the Projects or the Project Properties, including pursuant to any Release or disposal or in respect of any personal injury, property damage, or damage to the environment made, asserted or prosecuted by or on behalf of any Governmental Authority or any third party (whether based on negligent acts or omissions, statutory liability, or strict liability without fault or otherwise);
- 8.1.41 with respect to the Foreign Corrupt Practices Act of 1977 (United States), as amended, and the rules and regulations thereunder (the “**FCPA**”) or the *Corruption of Foreign Public Officials Act* (Canada) (the “**CFPOA**”):
  - 8.1.41.1 neither the Company nor any of the Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or the Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA or the CFPOA, including making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA or the CFPOA; and
  - 8.1.41.2 the Company and the Subsidiaries, as applicable, has instituted and maintains policies and procedures designed to ensure compliance with the legislation described in paragraph 8.1.41.1 above;
- 8.1.42 the Company and its Subsidiaries are insured by insurers who are, to the knowledge of the Company, of recognized financial responsibility; the

Company and the Subsidiaries, as applicable, are insured against such losses and risks and in such amounts that are appropriate to the operations, properties and assets of the Company and the Subsidiaries, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets; all policies of insurance and fidelity or surety bonds insuring the Company and its Subsidiaries and its business, assets, employees, officers and directors are in full force and effect; the Company and its Subsidiaries are in compliance with the terms of such policies and instruments in all material respects, including but not limited to the payment of premiums thereunder; there are no material claims by the Company and its Subsidiaries under any such policies or instruments as to which any insurance company is denying liabilities or defending under a reservation of rights clause; and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect;

- 8.1.43 other than as disclosed in the Prospectus, the Company and the Subsidiaries have not approved or entered into any agreement in respect of: (i) the purchase of any material property or any interest therein, or the sale, transfer or other disposition of any material property or any interest therein currently owned, directly or indirectly, by the Company or the Subsidiaries whether by asset sale, transfer of shares, or otherwise, and in each such case, that is material to the Company and the Subsidiaries (taken as a whole); or (ii) the change of control (by sale or transfer of a majority of the Common Shares or sale of all or substantially all of the assets of the Company) of the Company;
- 8.1.44 the Company is in compliance in all material respects with its continuous disclosure obligations under Canadian Securities Laws and, without limiting the generality of the foregoing, the information and statements in the public disclosure record of the Company were true and correct, in all material respects, as of the respective dates of such information and statements, except where updated by refiled or subsequently filed disclosure documents, and, at the time such documents were filed on SEDAR+, did not contain any misrepresentations and no material facts have been omitted therefrom which would make such information materially misleading as of the respective dates of such information and statements, and the Company has not filed any confidential material change reports which remain confidential as at the date hereof; and
- 8.1.45 Computershare Investor Services Inc. has been duly appointed as the registrar and transfer agent with respect to the Offered Shares.

- 8.2 The Company's representations, warranties and covenants contained in Schedule "A" attached hereto are hereby incorporated by reference herein and made a part hereof.

## **9. Representations and Warranties of the Selling Shareholders**

- 9.1 Each of the Selling Shareholders represents and warrants to the Underwriters and the Company, and acknowledges that the Underwriters and the Company are relying upon such representations and warranties in completing the transaction contemplated under this Agreement, that:
- 9.1.1 the applicable Selling Shareholder is an entity existing under the laws of its jurisdiction of formation and has the requisite power, authority and capacity, and all requisite action has been taken by the applicable Selling Shareholder to enter into and deliver this Agreement and to perform its obligations hereunder;
  - 9.1.2 this Agreement has been duly executed and delivered by the applicable Selling Shareholder and constitutes a legal, valid and binding obligation of the applicable Selling Shareholder, enforceable against it in accordance with its terms; except as enforcement hereof and thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought and subject to the fact that rights of indemnity and contribution may be limited by applicable law;
  - 9.1.3 the sale of the Secondary Shares by the applicable Selling Shareholder and the compliance by such Selling Shareholder with all of the provisions of this Agreement and the consummation of the transactions herein contemplated will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, the terms, conditions or provisions of such Selling Shareholder's constating documents or any resolutions of its directors or shareholders, any applicable laws, indenture, note, mortgage, deed of trust, loan agreement or other agreement or instrument to which such Selling Shareholder is a party or by which such Selling Shareholder is bound, or to which any of the property or assets of such Selling Shareholder is subject or any statute or any order, rule or regulation of any governmental authority having jurisdiction over such Selling Shareholder or the property thereof;
  - 9.1.4 the applicable Selling Shareholder has not taken and will not take, directly or indirectly, any action which is designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Secondary Shares;

- 9.1.5 other than the Underwriters in respect of the Offering, there is no person acting or purporting to act at the request of the applicable Selling Shareholder who is entitled to any brokerage, agency or other advisory or similar fee in connection with the transactions contemplated herein;
- 9.1.6 there is no action, proceeding or investigation pending or, to the knowledge of the applicable Selling Shareholder, threatened against or affecting such Selling Shareholder, at law or in equity, before or by any governmental authority, which questions the validity of any action taken or to be taken by such Selling Shareholder pursuant to this Agreement or in connection with the Offering;
- 9.1.7 the applicable Selling Shareholder is the sole beneficial owner of all of the Secondary Shares to be sold by such Selling Shareholder hereunder, free and clear of any Lien, claim, security, interest or other encumbrance whatsoever;
- 9.1.8 the applicable Selling Shareholder has full legal right, power and authority to sell the Secondary Shares to be sold by such Selling Shareholder hereunder, free and clear of any Lien, claim, security interest or other encumbrance whatsoever;
- 9.1.9 there are no agreements or restrictions which in any way limit or restrict the sale or transfer of any of the Secondary Shares to be sold by such Selling Shareholder hereunder;
- 9.1.10 no person (except the Underwriters) has any agreement or option, or any right or privilege (whether by applicable law, pre-emptive or contractual) capable of becoming such, under which the applicable Selling Shareholder is, or may become, obligated to transfer any Secondary Shares to be sold by such Selling Shareholder hereunder; and
- 9.1.11 other than as may be required under Applicable Securities Laws, no authorization is required for the sale or delivery by the applicable Selling Shareholder of the Secondary Shares to be sold by such Selling Shareholder hereunder.
- 9.2 The Selling Shareholder representations, warranties and covenants contained in Schedule "A" attached hereto are hereby incorporated by reference herein and made a part hereof.

## **10. Closing of the Offering**

- 10.1 The closing of the purchase and sale of the Offered Shares provided for in this Agreement shall be completed remotely via electronic transmission of documentation (such as by use of PDF) at the Closing Time or at such other place as the Company, the Selling Shareholders and the Underwriters may agree in writing. At the Closing Time, delivery of the Offered Shares to the

Underwriters shall be made through the facilities of CDS, or in such other manner as the Underwriters may direct.

- 10.2 The following are conditions precedent to the obligations of the Underwriters under this Agreement, which conditions each of the Company and the Selling Shareholders covenants to use its best efforts to fulfil as it relates to such party within the times set out herein, and which conditions may be waived in writing in whole or in part by the Underwriters:

10.2.1 receipt by the Underwriters of the following documents:

- 10.2.1.1 favourable legal opinions, dated the Closing Date, from the Selling Shareholders' counsel, Torys LLP, and from the Company's counsel, Blake, Cassels & Graydon LLP, and from the Underwriters' counsel, Cassels Brock & Blackwell LLP, with respect to all such matters as the Underwriters may reasonably request, including, without limiting the generality of the foregoing, the authorization, execution, and delivery of this Agreement, that all necessary action has been taken to authorize delivery and, if applicable, the execution and filing of each of the Offering Documents under applicable securities legislation and the regulations and rules thereunder of each of the Qualifying Jurisdictions, the enforceability of this Agreement and, in the case of counsel to the Company only, the appointment of Computershare Investor Services Inc. as the registrar and transfer agent with respect to the Offered Shares, it being understood that such counsel may rely on or provide directly the opinions of local counsel acceptable to them as to matters governed by the laws of jurisdictions other than the Provinces of British Columbia or Ontario, as applicable, and may rely, to the extent appropriate in the circumstances, as to matters of fact on certificates of the Selling Shareholders' and the Company's respective officers;
- 10.2.1.2 favourable legal opinions, dated the Closing Date, from reputable external legal counsel to the Company and the Subsidiaries, as to the ownership and good standing of each of the Subsidiaries in respect of the chain of title for each of the Projects, in form and substance acceptable to the Underwriters, acting reasonably;
- 10.2.1.3 favourable legal opinions, dated the Closing Date, from reputable external legal counsel to the Company, as to title matters in respect of the Project Real Property for each of the Projects, in form and substance acceptable to the Underwriters, acting reasonably;

- 10.2.1.4 in the event that any sales of Offered Shares are made in the United States pursuant to this Agreement, a favourable legal opinion, dated the Closing Date, from the Company's United States counsel, Shearman & Sterling LLP, to the effect that it is not necessary in connection with (i) the offer and sale of the Offered Shares to the Underwriters, and (ii) the initial reoffer and resale of the Offered Shares by the Underwriters, through their U.S. Affiliates in the United States, to register the Offered Shares under the U.S. Securities Act, provided, in each case, that such offers and sales are made in accordance with this Agreement and the U.S. Placement Memorandum (it being understood that no opinion needs to be given by counsel as to subsequent resale of any Offered Shares);
- 10.2.1.5 a certificate or certificates, dated the Closing Date, and signed by the President and Chief Executive Officer, Chief Financial Officer or the General Counsel and Corporate Secretary of the Company, or such other officer of the Company as may be acceptable to the Underwriters, acting reasonably, certifying that: (i) the Company has complied with all terms and conditions of this Agreement to be complied with by the Company at or prior to the Closing Time; (ii) the representations and warranties of the Company contained herein are true and correct as of the Closing Time; (iii) no order, ruling or determination having the effect of ceasing or suspending trading in the Common Shares has been issued and no proceedings for such purpose are pending or, to the best of the knowledge, information and belief of the person signing such certificate, are contemplated or threatened; and (iv) to the best of the knowledge, information and belief of the person signing such certificate, after having made reasonable inquiries, since December 31, 2022, there has been no material adverse change in the business, affairs, operations, assets, liabilities (contingent or otherwise), capital or ownership of the Company, from that disclosed in the Prospectus or any Supplementary Material (as they existed at the time of filing), and certifying to such other matters of a factual nature as the Underwriters and the Underwriters' counsel may reasonably request;
- 10.2.1.6 a certificate or certificates, dated the Closing Date, and signed by the Chief Executive Officer or the Chief Financial Officer of each of the Selling Shareholders, or such other officer of each of the Selling Shareholders as may be acceptable to the Underwriters, acting reasonably, certifying that (i) the Selling Shareholder has complied with all terms and conditions of this Agreement to be complied with by the Selling



Shareholder at or prior to the Closing Time; and (ii) the representations and warranties of the Selling Shareholder contained herein are true and correct as of the Closing Time, and certifying to such other matters of a factual nature as the Underwriters and the Underwriters' counsel may reasonably request;

10.2.1.7 a "bring-down" comfort letter from the Auditors required to be delivered pursuant to paragraph 6.2.3;

10.2.1.8 evidence satisfactory to the Underwriters that the Company has authorized and approved this Agreement, and the issuance and sale of the Treasury Shares and the grant of the Over-Allotment Option and all matters relating thereto;

10.2.1.9 evidence satisfactory to the Underwriters that each of the Selling Shareholders has authorized and approved this Agreement, and the sale of the Secondary Shares and all matters relating thereto; and

10.2.1.10 evidence satisfactory to the Underwriters of one or more electronic transfers of the Offered Shares to the Underwriters, or in such other manner as the Underwriters may direct, against payment to the Company and the Selling Shareholders, as applicable, or as the Company and each of the Selling Shareholders may direct, of the aggregate purchase price of the Treasury Shares and the Secondary Shares, as applicable, less an amount equal to the full amount of the Underwriting Fee payable in respect of the applicable Offered Shares, by wire transfer;

all in form and substance satisfactory to the Underwriters, acting reasonably;

10.2.2 the Prospectus and any Supplementary Material shall have been filed by the Company with the applicable securities commissions in accordance with applicable Canadian securities laws;

10.2.3 the representations and warranties of the Company contained herein being true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated hereby;

10.2.4 the representations and warranties of each of the Selling Shareholders contained herein being true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated hereby;

- 10.2.5 the Company having complied with all covenants and satisfied all terms and conditions to be complied with and satisfied by it at or prior to the Closing Time;
  - 10.2.6 each of the Selling Shareholders having complied with all covenants and satisfied all terms and conditions to be complied with and satisfied by it at or prior to the Closing Time; and
  - 10.2.7 the Underwriters not having previously terminated their obligations pursuant to paragraph 13 of this Agreement.
- 10.3 It shall be a condition precedent to the Company and each of the Selling Shareholders obligations to sell the Offered Shares that:
- 10.3.1 The Underwriters shall have delivered or caused to be delivered to the Company and such Selling Shareholder, as applicable, wire transfers representing the aggregate purchase price payable by the Underwriters for the Treasury Shares issued and sold by the Company and the Secondary Shares sold by such Selling Shareholder hereunder, less the applicable amounts equal to the related Underwriting Fee;
  - 10.3.2 the Underwriters shall have complied with the covenants and satisfied all terms and conditions to be complied with and satisfied by the Underwriters at or prior to the Closing Time (which condition may be waived in writing, in whole or in part, by each of the Company and the Selling Shareholders); and
  - 10.3.3 no order shall have been made by any Securities Commissions which restricts in any manner the distribution of the Offered Shares.
- 10.4 Notwithstanding any provision to the contrary herein, the Company's and the Selling Shareholders' obligations with respect to the preparation and delivery of, and representations, warranties and covenants regarding, the U.S. Placement Memorandum shall be of no force and effect unless (and until) RBC provides prior written notice to the Company and the Selling Shareholders that the Offered Shares have been offered and sold to a Person in the United States.
- 10.5 If the Over-Allotment Option is exercised as to all or any portion of Option Shares, evidence satisfactory to the Underwriters of one or more electronic transfers from the Company in respect of the Option Shares in a manner consistent with that contemplated by subparagraph 10.2.1.10, and payment therefor, shall be delivered at the Option Closing Time in the manner, and upon the terms and conditions set forth in paragraph 10.1 and subparagraph 10.2.1.10, except that reference therein to "Offered Shares" and "Closing Time" shall be deemed, for the purposes of this paragraph 10.4, to refer to the Option Shares and the Option Closing Time, respectively.

If the Over-Allotment Option is exercised, the obligations of the Underwriters to purchase the Option Shares shall be conditional on the delivery by the Company of the certificates referred to in subparagraph 10.2.1.5 as of the Option Closing Time as if references therein to “Closing Time” were references to Option Closing Time, a “bring-down” of the comfort letter from the Auditors dated the Option Closing Date required to be delivered pursuant to 10.2.1.7 and such other certificates, opinions, agreements, materials or other documents in form and substance satisfactory to the Underwriters as they may reasonably request.

The obligation of the Underwriters to close the purchase of any Option Shares at the Option Closing Time shall be conditional on the Underwriters not having previously terminated their obligations pursuant to paragraph 13 of this Agreement, with reference therein to “Closing Time” being deemed, for the purposes hereof, to refer to the Option Closing Time.

## 11. Indemnity

11.1 The Company shall indemnify and save harmless each of the Underwriters, their U.S. Affiliates, and the Underwriters’ directors, officers and employees (the “**Underwriter Indemnified Parties**”) from and against all losses (other than losses of profit in connection with the distribution of the Offered Shares), claims, costs, damages and liabilities caused by or arising directly or indirectly by reason of:

11.1.1 any information or statement (except any information or statement relating to the Selling Shareholders’ Information or the Underwriters’ Disclosure) contained in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material, being or being alleged to be a misrepresentation or untrue, or any omission or alleged omission to state therein any fact or information (except facts or information relating solely to the Selling Shareholders’ Information or the Underwriters’ Disclosure) required to be stated therein or necessary to make any of the statements therein not misleading in light of the circumstances in which they were made; or

11.1.2 any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory or other authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation (except a statement, omission or misrepresentation relating solely to the Selling Shareholders’ Information or the Underwriters’ Disclosure) in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material (except any document or material delivered or filed solely by the Selling Shareholders or the Underwriters) preventing or restricting the trading in or the sale or distribution of the Offered Shares or any other securities of the Company in any of the Offering Jurisdictions; or

11.1.3 any breach or default under any representation, warranty, covenant or agreement of the Company in this Agreement or any other documents to be delivered pursuant hereto or the failure of the Company to comply with any of its obligations hereunder or thereunder.

Notwithstanding the foregoing, this indemnity shall cease to apply to an Underwriter Indemnified Party if and to the extent that a court of competent jurisdiction, in a final judgment (in a proceeding to which the Underwriters were named as parties) that has become non-appealable shall determine that such losses, claims, costs, damages and liabilities to which such Underwriter Indemnified Party may be subject were caused by the gross negligence or wilful misconduct of such Underwriter Indemnified Party. In such event, such Underwriter Indemnified Party shall promptly reimburse the Company for any amounts advanced to the Underwriter Indemnified Party by the Company in respect of such claim.

11.2 Each of the Selling Shareholders shall indemnify and save harmless each of the Underwriter Indemnified Parties from and against all losses (other than losses of profit in connection with the distribution of the Offered Shares), claims, costs, damages and liabilities caused by or arising directly or indirectly by reason of:

11.2.1 any Selling Shareholders' Information being or being alleged to be a misrepresentation or untrue, or any omission or alleged omission to state therein any fact or information required to be stated therein or necessary to make such Selling Shareholders' Information not misleading in light of the circumstances in which they were made; or

11.2.2 any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory or other authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation relating solely to the Selling Shareholders' Information which prevents or restricts the trading in or the sale or distribution of the Offered Shares or any other securities of the Company in any of the Offering Jurisdictions; or

11.2.3 any breach or default under any representation, warranty, covenant or agreement of the Selling Shareholders in this Agreement or any other documents to be delivered pursuant hereto or the failure of the Selling Shareholders to comply with any of its obligations hereunder or thereunder.

Notwithstanding the foregoing, this indemnity shall cease to apply to an Underwriter Indemnified Party if and to the extent that a court of competent jurisdiction, in a final judgment (in a proceeding to which the Underwriters were named as parties) that has become non-appealable shall determine that such losses, claims, costs, damages and liabilities to which such Underwriter

Indemnified Party may be subject were caused by the gross negligence or wilful misconduct of such Underwriter Indemnified Party. In such event, such Underwriter Indemnified Party shall promptly reimburse the Selling Shareholders for any amounts advanced to the Underwriter Indemnified Party by the Selling Shareholders in respect of such claim.

- 11.3 The Company shall indemnify and save harmless the Selling Shareholders and the Selling Shareholders' directors, officers and employees (the "**Selling Shareholder Indemnified Parties**") from and against all losses (other than losses of profit in connection with the distribution of the Offered Shares), claims, costs, damages and liabilities caused by or arising directly or indirectly by reason of:

11.3.1 any information or statement (except any information or statement relating to the Underwriters' Disclosure or the Selling Shareholders' Information) contained in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material, being or being alleged to be a misrepresentation or untrue, or any omission or alleged omission to state therein any fact or information (except facts or information relating solely to the Underwriters' Disclosure or the Selling Shareholders' Information) required to be stated therein or necessary to make any of the statements therein not misleading in light of the circumstances in which they were made; or

11.3.2 any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory or other authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation (except a statement, omission or misrepresentation relating solely to the Underwriters' Disclosure or the Selling Shareholders' Information) in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material (except any document or material delivered or filed solely by the Underwriters or the Selling Shareholders) preventing or restricting the trading in or the sale or distribution of the Offered Shares or any other securities of the Company in any of the Offering Jurisdictions; or

11.3.3 any breach or default under any representation, warranty, covenant or agreement of the Company in this Agreement or any other documents to be delivered pursuant hereto or the failure of the Company to comply with any of its obligations hereunder or thereunder.

Notwithstanding the foregoing, this indemnity shall cease to apply to a Selling Shareholder Indemnified Party if and to the extent that a court of competent jurisdiction, in a final judgment (in a proceeding to which the applicable Selling Shareholder was named as a party) that has become non-appealable shall determine that such losses, claims, costs, damages and liabilities to which such Selling Shareholder Indemnified Party may be subject were caused by the gross

negligence or wilful misconduct of such Selling Shareholder Indemnified Party. In such event, such Selling Shareholder Indemnified Party shall promptly reimburse the Company for any amounts advanced to the Selling Shareholder Indemnified Party by the Company in respect of such claim.

- 11.4 The Selling Shareholders shall indemnify and save harmless Company and the Company's directors, officers and employees (the "**Company Indemnified Parties**") from and against all losses (other than losses of profit in connection with the distribution of the Offered Shares), claims, costs, damages and liabilities caused by or arising directly or indirectly by reason of:

11.4.1 any Selling Shareholders' Information being or being alleged to be a misrepresentation or untrue, or any omission or alleged omission to state therein any fact or information required to be stated therein or necessary to make such Selling Shareholders' Information not misleading in light of the circumstances in which they were made; or

11.4.2 any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory or other authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation relating solely to the Selling Shareholders' Information which prevents or restricts the sale or distribution of the Offered Shares in any of the Offering Jurisdictions; or

11.4.3 any breach or default under any representation, warranty, covenant or agreement of the Selling Shareholders in this Agreement or any other documents to be delivered pursuant hereto or the failure of the Selling Shareholders to comply with any of its obligations hereunder or thereunder.

Notwithstanding the foregoing, this indemnity shall cease to apply to a Company Indemnified Party if and to the extent that a court of competent jurisdiction, in a final judgment (in a proceeding to which the Company was named as a party) that has become non-appealable shall determine that such losses, claims, costs, damages and liabilities to which such Company Indemnified Party may be subject were caused by the gross negligence or wilful misconduct of such Company Indemnified Party. In such event, such Company Indemnified Party shall promptly reimburse the Selling Shareholders for any amounts advanced to the Company Indemnified Party by the Selling Shareholders in respect of such claim.

- 11.5 As used in this Agreement, "**Applicable Indemnifier**" means: (i) the Company, in respect of a claim for indemnification under paragraphs 11.1 and 11.3; or (ii) the Selling Shareholders in respect of a claim for indemnification under paragraphs 11.2 and 11.4, as applicable.

- 11.6 For greater certainty, the Company and the Selling Shareholders agree that neither the obligation of the Company to indemnify the Selling Shareholder Indemnified Parties pursuant to paragraph 11.3 nor the obligation of the Selling Shareholders to indemnify the Company Indemnified Parties pursuant to paragraph 11.4 shall in any way affect, impair or derogate from the Company's and the Selling Shareholders' respective indemnification obligations in favour of the Underwriter Indemnified Parties pursuant to paragraphs 11.1 and 11.2.
- 11.7 If any claim contemplated by this paragraph 11 shall be asserted against any of the Indemnified Parties, or if any potential claim contemplated by this paragraph 11 shall come to the knowledge of any of the Indemnified Parties, the Indemnified Party concerned shall notify the Applicable Indemnifier as soon as possible of the nature of such claim (provided that any failure to so notify shall not, except to the extent of actual prejudice to the Applicable Indemnifier therefrom, affect the Applicable Indemnifier's liability under this paragraph 11) and the Applicable Indemnifier shall, subject as hereinafter provided, be entitled (but not required) to assume the defence on behalf of the Indemnified Party of any suit brought to enforce such claim. Any such defence shall be through legal counsel acceptable to the Indemnified Party, acting reasonably and no admission of liability shall be made by the Applicable Indemnifier or the Indemnified Party without, in each case, the prior written consent of all the parties hereto, such consent not to be unreasonably withheld. An Indemnified Party shall have the right to employ separate counsel in any such suit and participate in the defence thereof but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless: (i) the Applicable Indemnifier fails to assume the defence of such suit on behalf of the Indemnified Party within ten (10) Business Days of receiving notice of such suit; (ii) the employment of such counsel has been authorized by the Applicable Indemnifier; or (iii) the named parties to any such suit include both the Indemnified Party and the Applicable Indemnifier and the Indemnified Party shall have been advised by counsel that there may be one or more legal defences available to the Indemnified Party which are different from or in addition to those available to the Applicable Indemnifier and that representation of the Indemnified Party by counsel for the Applicable Indemnifier is inappropriate as a result of the potential or actual conflicting interests of those represented (in each of which cases the Applicable Indemnifier shall not have the right to assume the defence of such suit on behalf of the Indemnified Party and shall be liable to pay the reasonable fees and expenses of the counsel for the Indemnified Party). Notwithstanding the foregoing, no settlement may be made by an Indemnified Party without the prior written consent of the Applicable Indemnifier, which consent will not be unreasonably withheld or delayed. It is the intention of the Applicable Indemnifier to constitute the Underwriters as trustee for the Underwriters' directors, officers and employees, of the covenants of the Applicable Indemnifier under paragraphs 11.1 and 11.2 with respect to the Underwriters' directors, officers and employees and the Underwriters agree to accept such trust and to hold and enforce such covenants on behalf of such persons.

- 11.8 Subject to paragraph 11.10, the Company hereby waives its right to recover contribution from the Underwriters with respect to any liability of the Company by reason of or arising out of any misrepresentation contained in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material (except facts or information relating solely to the Underwriters' Disclosure).
- 11.9 Subject to paragraph 11.10, each of the Selling Shareholders hereby waives its right to recover contribution from the Underwriters with respect to any liability of a Selling Shareholder by reason of or arising out of any misrepresentation contained in the Selling Shareholders' Information (except facts or information relating solely to the Underwriters' Disclosure).
- 11.10 If, for any reason, the indemnification provided for in paragraph 11.1 or paragraph 11.2 is unavailable, in whole or in part, to an Underwriter Indemnified Party in respect of any losses, claims, damages, liabilities, costs or expenses (or claims, actions, suits or proceedings in respect thereof) referred to in paragraph 11.1 or paragraph 11.2, and subject to the restrictions and limitations referred to therein, the Applicable Indemnifier shall contribute to the amount paid or payable other than losses of profits in connection with the distribution of the Offered Shares (or, if such indemnity is unavailable only in respect of a portion of the amount so paid or payable, such portion of the amount so paid or payable) by such Underwriter Indemnified Party as a result of such losses, claims, damages, liabilities, costs or expenses (or claims, actions, suits or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Shareholders on the one hand and the Underwriters on the other hand from the sale of the Offered Shares; provided, however, that the Underwriter Indemnified Parties shall not in any event be liable to contribute, in the aggregate, any amount in excess of the amount of the Underwriting Fee.

The relative benefits received by the Applicable Indemnifier, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the proportion that the total proceeds received from the sale of the Offered Shares (net of the Underwriting Fee) is to the Underwriting Fee. The amount paid or payable by an Underwriter Indemnified Party as a result of such losses, claims, damages, liabilities, costs or expenses (or claims, actions, suits or proceedings in respect thereof) referred to above shall be deemed to include any legal or other expenses reasonably incurred by such Underwriter Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, costs or expenses (or claims, actions, suits or proceedings in respect thereof), whether or not resulting in any such action, suit, proceeding or claim.

The indemnity and contribution covenants contained in this paragraph 11 shall remain in full force and effect regardless of (a) any investigation made by or on behalf of the Underwriters unless any matter or thing contemplated by this paragraph which shall be asserted against an Underwriter Indemnified Party arises by reason or in respect of facts known to the Underwriters at the Closing



Time in which case such indemnity and contribution covenants shall not apply in respect of the purchase made by the Underwriters at such Closing Time, (b) acceptance by the Underwriters of any of the Offered Shares and payment therefor, or (c) any termination of this Agreement.

## **12. Expenses**

The Company will be responsible for all costs and expenses related to the Offering (except for Underwriters' discounts or commissions allocable to the sale of Secondary Shares by the Selling Shareholders and applicable transfer taxes relating thereto, if any, and the Selling Shareholders' legal and professional fees, all of which shall be borne by the Selling Shareholders), whether or not it is completed, including, but not limited to: fees and disbursements of the Company's legal counsel; fees and disbursements of the Company's accountants and auditors; fees and disbursements of other applicable experts; Company expenses related to roadshows and marketing activities; printing costs; filing fees; stock exchange fees; reasonable out-of-pocket expenses of the Underwriters (including, but not limited to, their travel expenses in connection with due diligence and marketing activities), provided that any such single out-of-pocket expense in excess of \$5,000 shall be subject to prior approval, and taxes on all of the foregoing. The Underwriters will be responsible for the fees, disbursements and related taxes of their legal counsel.

## **13. Termination**

13.1 In addition to any other remedies which may be available to the Underwriters, any Underwriter shall be entitled, at its option, to terminate and cancel, without any liability on the Underwriter's part, its obligations under this Agreement:

13.1.1 if, prior to the Closing Time, any order to cease or suspend trading in any securities of the Company, or prohibiting or restricting the distribution of the Offered Shares is made, or any proceeding is announced or commenced for the making of any such order, by any securities regulatory authority, any stock exchange or by any other competent authority, and has not been rescinded, revoked or withdrawn;

13.1.2 if, prior to the Closing Time, any inquiry, action, suit, investigation or other proceeding (whether formal or informal) is commenced, threatened or announced or any order or ruling is issued under or pursuant to any statute of Canada or any province or territory thereof, or of the United States or any state thereof, or by any official of any stock exchange, or by any other regulatory authority having jurisdiction over a material portion of the business and affairs of the Company and its Subsidiaries, taken as a whole, or otherwise, or there is any change of law, or the interpretation, pronouncement or administration thereof or in respect thereof which in the opinion of such Underwriter, acting reasonably, may prevent or operates to prevent or restrict the distribution of, trading in, or marketability of the Offered Shares or the trading in any other securities of the Company;

- 13.1.3 if, prior to the Closing Time, there should develop, occur or come into effect or existence any event, action, state, condition or occurrence of national or international consequence (including any natural catastrophe, any outbreak or escalation of war, hostilities or terrorism, or national emergency or similar event), or other calamity or crisis, or any change or development involving a prospective change in national or international political, financial or economic conditions or any action, law, regulation, inquiry or other occurrence of any nature whatsoever which, in the opinion of such Underwriter, materially adversely affects or may materially adversely affect the Canadian financial markets generally or the business, operations or affairs of the Company and its Subsidiaries, taken as a whole, or the market price or value of the Offered Shares or any other securities of the Company; or
- 13.1.4 if, prior to the Closing Time, there shall occur, be discovered or be publicly announced by the Company any material change (actual, imminent or reasonably expected) in the business, financial condition, assets, liabilities (contingent or otherwise), results of operations or prospects of the Company and its Subsidiaries, taken as a whole, or change in material fact which in the opinion of such Underwriter, acting reasonably, could be expected to have a material adverse effect on the market price or value of the Offered Shares or any other securities of the Company, or such Underwriter shall become aware of any material information with respect to the Company which had not been publicly disclosed or disclosed in writing to the Underwriters at or prior to February 1, 2024 and which in the opinion of such Underwriter, acting reasonably, could be expected to have a material adverse effect on the market price or value of the Offered Shares or any other securities of the Company; or
- 13.1.5 if, prior to the Closing Time, the Company shall be in breach of or default under or in non-compliance with any material representation, warranty, term, condition or covenant of this Agreement.

Any such termination shall be effected by an Underwriter or the Underwriters by giving the Company, the Selling Shareholders and RBC written notice to that effect not later than the Closing Time. If an Underwriter terminates its obligations hereunder pursuant to this paragraph 13, the Company's and the Selling Shareholders' liability hereunder to the Underwriter shall be limited to the Company's and the Selling Shareholders' obligations under paragraphs 11 and 12 hereof.

#### **14. Reliance on the Joint Bookrunners**

All steps or other actions which must or may be taken by the Underwriters in connection with this Agreement shall be taken by the Joint Bookrunners, with the exception of the matters contemplated by paragraphs 11, 13 and 16, on the Underwriters' behalf and the execution of this offer by the Underwriters shall constitute the authority of the Company and

the Selling Shareholders for accepting notification of any such steps or other actions from the Joint Bookrunners. The Joint Bookrunners hereby agree to use their reasonable best efforts to consult with the other Underwriters prior to taking any step or other action pursuant to this paragraph 14.

**15. Underwriters' Obligation to Purchase Offered Shares**

- 15.1 The Underwriters' obligation to purchase the Offered Shares at the Closing Time or the Option Closing Time, as applicable, shall be several and not joint, and the Underwriters' respective obligations in this respect shall be as to the following percentages of the aggregate amount of Offered Shares to be purchased at that time:

RBC	30.0%
NBF	20.0%
Scotia	20.0%
BMO	10.0%
Canaccord	10.0%
CIBC	10.0%
	<hr/>
	100.0%

- 15.2 If an Underwriter fails to purchase its applicable percentage of the aggregate amount of the Offered Shares at the Closing Time or the Option Closing Time, as applicable, (the Offered Shares in respect of which the defaulting Underwriter(s) fail to purchase and the non-defaulting Underwriters do not elect to purchase being hereinafter called the “**Defaulted Securities**”) and the number of Defaulted Securities exceeds 10% of the number of Offered Shares, the other Underwriters shall have the right, but shall not be obligated, to purchase on a *pro rata* basis (or in such other proportion as the remaining Underwriters may mutually agree) all, but not less than all, of the Offered Shares which would otherwise have been purchased by the Underwriter which fails to purchase. If such right is not exercised, the Underwriters that are able and willing to purchase shall be relieved of all obligations to the Company and the Selling Shareholders on submission to the Company and the Selling Shareholders of reasonable evidence of their ability and willingness to fulfill their obligations hereunder at the Closing Time or the Option Closing Time, as applicable, and the Company and the Selling Shareholder shall be relieved of all obligations to such Underwriters, except in respect of any liability which may have arisen or may thereafter arise under paragraphs 11 and 12. For clarity, if the number of Defaulted Securities is 10% or less of the number of Offered Shares, the other Underwriters shall be severally obligated to purchase on a *pro rata* basis (or in such proportion as the remaining Underwriters may agree) all but not less than all of the Defaulted Securities. Nothing in this subparagraph 15.2 shall oblige the Company or the Selling Shareholders to sell less than all of the aggregate amount of the Treasury Shares and Secondary Shares, respectively, or shall relieve any Underwriter in default hereunder from liability to the Company or the Selling Shareholders.

- 15.3 Nothing in this Agreement shall impose on any Underwriter liability to the Company or any Selling Shareholder in respect of the default by the other Underwriter of its obligations under this Agreement.

## **16. Conditions**

All of the terms and conditions contained in this Agreement to be satisfied by the Company or the Selling Shareholders prior to the Closing Time or the Option Closing Time, as applicable, shall be construed as conditions, and any breach or failure by the Company or the Selling Shareholders to comply with any of such terms and conditions shall entitle an Underwriter to terminate such Underwriter's obligations to purchase the Offered Shares by written notice to that effect given to the Company and the Selling Shareholders prior to the Closing Time or the Option Closing Time, as applicable. It is understood and agreed that an Underwriter may waive in whole or in part, or extend the time for compliance with, any of such terms and conditions without prejudice to its rights in respect of any such terms and conditions or any other or subsequent breach or non-compliance; provided, however, that to be binding, any such waiver or extension must be in writing. If an Underwriter elects to terminate such Underwriter's obligations to purchase the Offered Shares as aforesaid, whether the reason for such termination is within or beyond the control of the Company or the Selling Shareholders, the liability of the Company and the Selling Shareholders hereunder shall be limited to the indemnity referred to in paragraph 11 hereof and the payment of expenses referred to in paragraph 12 hereof.

## **17. Survival**

All warranties, representations, covenants and agreements of the Company and the Selling Shareholders herein contained or contained in any other Transaction Documents shall survive the purchase by the Underwriters of the Offered Shares and shall continue in full force and effect for the period hereinafter described, regardless of any investigation which the Underwriters may carry out or which may be carried out on behalf of the Underwriters or otherwise and notwithstanding any subsequent disposition by the Underwriters of the Offered Shares. Such warranties, representations, covenants and agreements of the Company and the Selling Shareholders shall survive for such maximum period of time as the Underwriters may be entitled to commence an action, or exercise a right of rescission, with respect to a misrepresentation contained in the Prospectus, or Supplementary Material or either of them, pursuant to Canadian Securities Laws in any of the Qualifying Jurisdictions.

## **18. Standstill/Black-out**

- 18.1 The Company shall not, without the prior written consent of the Joint Bookrunners, on behalf of the Underwriters (such consent not to be unreasonably withheld), directly or indirectly, during the period ending 90 days after the Closing Date: (A) create, allot, authorize, offer, issue, secure, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise lend, transfer or dispose of, directly or indirectly, any Common Shares, rights to purchase Common Shares or any securities convertible into or exercisable or

exchangeable for Common Shares; or (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such Common Shares, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Shares or other securities or interests, in cash or otherwise, or agree to or announce the intention to do any of the foregoing, other than, in each case: (i) for purposes of director, officer, employee or consultant incentive plans, (ii) in connection with the Company's long term incentive plan, or (iii) to satisfy existing instruments issued as at February 1, 2024.

- 18.2 The Selling Shareholders shall not, without the prior written consent of RBC, on behalf of the Underwriters (such consent not to be unreasonably withheld), sell or otherwise lend, transfer or dispose of (or announce any intention to sell or otherwise lend, transfer or dispose of), directly or indirectly, any equity securities of the Company, or any securities exchangeable or convertible into equity securities of the Company, for the period ending 90 days after the Closing Date.

## **19. Notice**

Any notice or other communication required or permitted to be given hereunder shall be in writing to the following addresses:

### **in the case of the Selling Shareholders:**

Orion Fund JV Limited  
Orion Mine Finance Fund II LP  
Orion Mine Finance (Master) Fund I-A LP

c/o Orion Resource Partners (USA) LP  
1045 Avenue of the Americas, 25<sup>th</sup> Floor  
New York, NY 10018

Attention: David Blassberger  
E-mail: [Redacted – Personal Information]

with a copy to:

Torys LLP  
79 Wellington Street West, Suite 3000  
Box 270, TD Centre  
Toronto, ON M5K 1N2

Attention: Michael Pickersgill  
E-mail: [Redacted – Personal Information]

### **in the case of the Company:**

Capstone Copper Corp.  
2100 - 510 West Georgia Street  
Vancouver, BC V6B 0M3

Attention: Wendy King  
E-mail: [Redacted – Personal Information]

with a copy to:

Blake, Cassels & Graydon LLP  
1133 Melville Street  
Suite 3500, The Stack  
Vancouver, BC V6E 4E5

Attention: Bob Wooder  
E-mail: [Redacted – Personal Information]

**in the case of the Underwriters,**

**to RBC:**

RBC Dominion Securities Inc.  
2100 – 666 Burrard Street  
Vancouver, BC V6C 2X8

Attention: Michael Scott  
E-mail: [Redacted – Personal Information]

**to NBF:**

National Bank Financial Inc.  
130 King Street West, Suite 3200  
Toronto, ON M5X 1J9

Attention: Elian Turner  
E-mail: [Redacted – Personal Information]

**and to Scotia:**

Scotia Capital Inc.  
40 Temperance Street, 5<sup>th</sup> Floor  
Toronto, ON M5H 0B4

Attention: Stephen Davy  
E-mail: [Redacted – Personal Information]

with a copy to:

Cassels Brock & Blackwell LLP  
Suite 2200, 885 West Georgia Street  
Vancouver, BC V6C 3E8

Attention: Jennifer Traub and Chad Accursi  
E-mail: [Redacted – Personal Information] and [Redacted – Personal Information]

The Company, the Selling Shareholders or any Underwriter may change its address for notice by notice given in the manner aforesaid. Any such notice or other communication shall be deemed to have been given on the day on which it was delivered or sent by e-mail if received during normal business hours; otherwise, it shall be deemed to have been received by 9:00 a.m. (Toronto time) on the next Business Day.

## **20. Not Fiduciaries**

The Company and the Selling Shareholders hereby acknowledge that the Underwriters are acting solely as underwriters in connection with the Offering. The Company and the Selling Shareholders further acknowledge that the Underwriters are acting pursuant to a contractual relationship created solely by this Agreement entered into on an arm's length basis, and in no event do the parties intend that the Underwriters act or be responsible as fiduciaries to the Company, the Selling Shareholders, their respective management, securityholders or creditors or any other person in connection with any activity that the Underwriters may undertake or have undertaken in furtherance of such Offering, either before or after the date hereof. The Company, the Selling Shareholders and the Underwriters agree that they are each responsible for making their own independent judgments with respect to the transactions contemplated by this Agreement and that any opinions or views expressed by the Underwriters to the Company or the Selling Shareholders regarding such transactions, including, but not limited to, any opinions or views with respect to the price or market for the Offered Shares, do not constitute recommendations to the Company or the Selling Shareholders.

## **21. Time of Essence**

Time shall be of the essence of this Agreement.

## **22. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the courts of such province shall have non-exclusive jurisdiction over any dispute hereunder.

## **23. Counterparts**

This Agreement may be executed and delivered (including by electronic transmission or portable document format (PDF)) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

If the foregoing is in accordance with your understanding and is agreed to by you, please confirm your acceptance by signing the enclosed copies of this Agreement at the place indicated and returning the same to RBC, on behalf of the undersigned.

Yours very truly,

**RBC DOMINION SECURITIES INC.**

By:

(signed) *Michael Scott*

Name: Michael Scott

Title: Managing Director

**NATIONAL BANK FINANCIAL INC.**

By: (signed) *Eliau Terner*

Name: Eliau Terner

Title: Managing Director & Head,  
Global Metals & Mining

**SCOTIA CAPITAL INC.**

By: (signed) *Brendan Spinks*

Name: Brendan Spinks

Title: Managing Director

**BMO NESBITT BURNS INC.**

By: (signed) *Jamie Rogers*

Name: Jamie Rogers

Title: Managing Director

**CANACCORD GENUITY CORP.**

By: (signed) *Tom Jakubowski*

Name: Tom Jakubowski

Title: Managing Director, Global  
Head of Metals & Mining



**CIBC WORLD MARKETS INC.**

By: (signed) *Steven Reid*  
Name: Steven Reid  
Title: Managing Director &  
Global Head, Mining

Accepted and agreed to as of the date first written above.

**ORION FUND JV LIMITED**

By: (signed) Oskar Lewnowski  
Name: Oskar Lewnowski  
Title: Director

**ORION MINE FINANCE FUND II LP,**  
by its general partner, **ORION MINE**  
**FINANCE GP II LP** by its general  
partner, **ORION MINE FINANCE GP II**  
**LIMITED**

By: (signed) Oskar Lewnowski  
Name: Oskar Lewnowski  
Title: Director

**ORION MINE FINANCE (MASTER)**  
**FUND I-A LP**, by its general partner,  
**ORION MINE FINANCE GP I-A**  
**LIMITED**

By: (signed) Oskar Lewnowski  
Name: Oskar Lewnowski  
Title: Director

**CAPSTONE COPPER CORP.**

By: (signed) Wendy King  
Name: Wendy King  
Title: SVP, Risk, ESG and  
General Counsel

**SCHEDULE A**  
**UNITED STATES OFFERS AND SALES**

As used in this Schedule “A” the following terms shall have the meanings indicated:

**“Directed Selling Efforts”** means “directed selling efforts” as that term is defined in Rule 902 of Regulation S. Without limiting the foregoing, but for greater clarity in this Schedule “A”, it means, subject to the exclusions from the definition of directed selling efforts contained in Regulation S, any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the Offered Shares and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the Offering;

**“Foreign Issuer”** means a foreign issuer as that term is defined in Rule 902 of Regulation S;

**“General Solicitation”** and **“General Advertising”** mean “general solicitation” and “general advertising”, respectively, as used in Rule 502(c) of Regulation D, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising;

**“Investment Company Act”** means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder;

**“Offshore Transaction”** means an “offshore transaction” as that term is defined in Rule 902 of Regulation S;

**“Qualified Institutional Buyer”** means a “qualified institutional buyer” as that term is defined in Rule 144A;

**“Regulation D”** means Regulation D adopted by the SEC under the U.S. Securities Act;

**“Regulation S”** means Regulation S adopted by the SEC under the U.S. Securities Act;

**“Rule 144A”** means Rule 144A adopted by the SEC under the U.S. Securities Act;

**“SEC”** means the United States Securities and Exchange Commission;

**“Substantial U.S. Market Interest”** means “substantial U.S. market interest” as that term is defined in Rule 902 of Regulation S;

**“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

**“U.S. Securities Act”** means the United States Securities Act of 1933, as amended.

All other capitalized terms used but not otherwise defined in this Schedule “A” shall have the meanings assigned to them in the underwriting agreement to which this Schedule “A” is attached.

### **Representations, Warranties and Covenants of the Underwriters**

Each Underwriter, separately and not jointly, acknowledges that the Offered Shares have not been and will not be registered under the U.S. Securities Act and may not be offered or sold to any person within the United States except pursuant to an exemption from the registration requirements of the U.S. Securities Act and Applicable Securities Laws. Accordingly, each Underwriter, separately but not jointly, represents, warrants and covenants to the Company and the Selling Shareholders that:

1. The Underwriter has offered and sold, and will offer and sell, Offered Shares only (a) in an Offshore Transaction in accordance with Rule 903 of Regulation S or (b) in the United States in accordance with Rule 144A as provided in Section 2 through Section 11 below and has not engaged, and will not engage, in any conduct in the United States involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act. Accordingly, neither the Underwriter, its affiliates nor any persons acting on their behalf, has taken or will take any action that would cause the exemption afforded by Rule 144A or Regulation S to be unavailable for offers and sales of Offered Shares pursuant to this Agreement, or has engaged or will engage in, has made or will make or has facilitated or will facilitate the making of (except as permitted in Section 2 through Section 11) (i) any offer to sell or any solicitation of an offer to buy, any Offered Shares to any person in the United States; (ii) any sale of Offered Shares to any purchaser unless, at the time the buy order was or will have been originated, the purchaser was outside the United States, or such Underwriter, affiliate or person acting on behalf of either reasonably believed that such purchaser was outside the United States (except for any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States); or (iii) any Directed Selling Efforts in the United States with respect to the Offered Shares.
2. All offers and sales of the Offered Shares in the United States will be effected by or through the U.S. broker-dealer affiliate (the **“U.S. Affiliate”**) of the Underwriter, duly registered under the U.S. Securities Laws, or directly by the Underwriter pursuant to Rule 15a-6 under the U.S. Exchange Act, and will be effected in accordance with all applicable United States and applicable state securities law broker-dealer requirements. Each U.S. Affiliate of the Underwriter purchasing Offered Shares in the United States is a Qualified Institutional Buyer.

3. Any offer, sale or solicitation of an offer to buy Offered Shares that has been made or will be made in the United States was or will be made in accordance with Rule 144A only to persons it reasonably believes to be Qualified Institutional Buyers.
4. Immediately prior to soliciting such offerees, the Underwriter had reasonable grounds to believe and did believe that each offeree was a Qualified Institutional Buyer.
5. No form of General Solicitation or General Advertising has been or will be used, including advertisements, articles, notices or other communications published in any newspaper, magazine, or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the Offered Shares in the United States.
6. At closing, the Underwriter, together with its U.S. Affiliate selling Offered Shares in the United States, will provide a certificate, substantially in the form of Exhibit A to this Schedule relating to the manner of the offer and sale of the Offered Shares in the United States, or will be deemed to have represented and warranted for the benefit of the Company and the Selling Shareholders that neither the Underwriter nor the U.S. Affiliate offered or sold Offered Shares in the United States.
7. The Underwriter and the U.S. Affiliate shall inform all purchasers to whom such Underwriter or U.S. Affiliate sells Offered Shares in the United States that such securities have not been and will not be registered under the U.S. Securities Act and are being sold to it in reliance on the exemption from registration under the U.S. Securities Act provided by Rule 144A thereunder, and all such purchasers shall be required to execute and deliver a qualified institutional buyer letter in the form attached to the U.S. Placement Memorandum before the sale to such purchaser is made (the **“Qualified Institutional Buyer Letter”**).
8. The Underwriter shall cause its U.S. Affiliate to deliver, at a reasonable time prior to the time of an offeree’s purchase of any Offered Shares, a copy of the U.S. Placement Memorandum, together with the Prospectus and any Supplementary Material, to each of its offerees in the United States, and no other written material has or shall be used in connection with the offer or sale of the Offered Shares in the United States.
9. Prior to the Closing Time or the Option Closing Time, as applicable, the Underwriter will deliver to the Company and the Selling Shareholders signed copies of the Qualified Institutional Buyer Letter, in substantially the same form appended to the U.S. Placement Memorandum, from all persons in the United States to which it has sold Offered Shares.
10. At least one Business Day prior to the Closing Date or the Option Closing Date, as applicable, the Underwriter shall provide Computershare Investor Services Inc., the Company and the Selling Shareholders with a list of all purchasers of Offered Shares in the United States.

11. The Underwriter has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Shares, except with its U.S. Affiliates, and selling group members or with the prior written consent of the Company and the Selling Shareholders. The Underwriter shall cause each of its U.S. Affiliates and each selling group member who may offer or sell Offered Shares in the United States to agree, for the benefit of the Company and the Selling Shareholders, to the same provisions as are contained in the foregoing Section 1 through Section 10 hereof.

### **Representations, Warranties and Covenants of the Company**

The Company represents, warrants, covenants and agrees that:

1. The Company is a Foreign Issuer and reasonably believes there is no Substantial U.S. Market Interest in the Offered Shares.
2. Neither the Company nor any of its affiliates, nor any person acting on their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms or any person acting on their behalf, as to whom the Company makes no representation) (i) has engaged or will engage in any Directed Selling Efforts with respect to the Offered Shares, or in any form of General Solicitation or General Advertising or in any conduct involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act with respect to offers or sales of the Offered Shares in the United States, or (ii) has taken or will take any action that would cause the exemption afforded by Rule 144A or Regulation S to be unavailable for offers and sales of Offered Shares pursuant to this Agreement.
3. Neither the Company nor any of its affiliates, nor any person acting on its or their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms or any person acting on their behalf, as to whom the Company makes no representation), has made or will make: (i) any offer to sell, or any solicitation of an offer to buy, any Offered Shares in the United States; or (ii) any sale of Offered Shares to any purchaser unless, at the time the buy order was or will have been originated, either (A) such purchaser is outside the United States, or (B) the Company, its affiliates, and any person acting on their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms or any person acting on their behalf, as to whom the Company makes no representation) reasonably believe that such purchaser is outside the United States (except for any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated or (if an individual) resident in the United States).
4. The Offered Shares are not, and as of the Closing Time or the Option Closing Time, as applicable, the Offered Shares will not be, and no securities of the same class as the Offered Shares are or will be, (i) listed on a national securities exchange in the United States registered under Section 6 of the U.S. Exchange Act; (ii) quoted in an "automated inter-dealer quotation system", as such term is used in the U.S. Exchange Act; or (iii) convertible or exchangeable at an effective conversion premium (calculated

as specified in Section (a)(6) of Rule 144A) of less than ten (10) percent for securities so listed or quoted.

5. The Company is not now and as a result of the sale of the Offered Shares contemplated hereby will not be required to register as an “investment company” pursuant to the United States Investment Company Act of 1940, as amended.
6. The Company has not, in the past six months, directly or indirectly, solicited any offer to buy, sold or offered to sell or will, in the six months after the completion of the offering of Offered Shares, solicit any offer to buy, sell or offer to sell any of its securities in a manner that would be integrated with the sale of the Offered Shares and require that the Offered Shares be registered under the U.S. Securities Act.

### **Representations, Warranties and Covenants of the Selling Shareholders**

1. Each of the Selling Shareholders represents, warrants, covenants and agrees that neither the Selling Shareholder nor any of its affiliates, nor any person acting on their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms, or any person acting on their behalf, as to whom the Selling Shareholder makes no representation) (i) has engaged or will engage in any Directed Selling Efforts with respect to the Offered Shares, or in any form of General Solicitation or General Advertising with respect to offers or sales of the Offered Shares in the United States, or (ii) has taken or will take any action that would cause the exemption afforded by Rule 144A or Regulation S to be unavailable for offers and sales of Offered Shares pursuant to this Agreement.
2. None of the Selling Shareholders nor any of their respective affiliates, nor any person acting on their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms or any person acting on their behalf, as to whom the Selling Shareholders make no representation), has made or will make: (i) any offer to sell, or any solicitation of an offer to buy, any Offered Shares in the United States; or (ii) any sale of Offered Shares to any purchaser unless, at the time the buy order was or will have been originated, either (A) such purchaser is outside the United States, or (B) the Selling Shareholders, their respective affiliates, and any person acting on their behalf (other than the Underwriters, the U.S. Affiliates, the Selling Firms or any person acting on their behalf, as to whom the Selling Shareholders make no representation) reasonably believe that such purchaser is outside the United States (except for any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated or (if an individual) resident in the United States).

**EXHIBIT A TO SCHEDULE A**  
**UNDERWRITERS' CERTIFICATE**

In connection with the private placement in the United States of the Offered Shares of Capstone Copper Corp. (the “**Company**”) pursuant to the underwriting agreement dated February 5, 2024 among the Underwriters named therein, the Selling Shareholders (as defined therein) and the Company (the “**Underwriting Agreement**”), each of the undersigned does hereby certify as follows:

1. **[Name of U.S. broker-dealer affiliate]** is a Qualified Institutional Buyer, a duly registered broker or dealer with the United States Securities and Exchange Commission and is on the date hereof, and was at the time of each offer and sale by it of the Offered Shares, a member of and in good standing with the Financial Industry Regulatory Authority, Inc. and all offers and sales of Offered Shares in the United States have been and will be effected by **[Name of U.S. broker-dealer affiliate]** in accordance with all U.S. broker-dealer requirements or by the Underwriter pursuant to the exemption provided under Rule 15a-6 of the U.S. Exchange Act;
2. each offeree in the United States was provided, at a reasonable time prior to such offeree's purchase of any Offered Shares, with a copy of the U.S. private placement memorandum (the “**U.S. Placement Memorandum**”), including the Canadian Prospectus Supplement dated February 5, 2024, the related short form base shelf prospectus of the Company dated March 1, 2023 and the documents incorporated by reference therein for the Offering in the United States and no other written material was used in connection with the offer and sale of the Offered Shares in the United States;
3. immediately prior to our transmitting such U.S. Placement Memorandum to such offerees in the United States, we had reasonable grounds to believe and did believe that each such offeree was, and we continue to believe that each such offeree who is purchasing Offered Shares from us in the United States is a “qualified institutional buyer”, as defined in Rule 144A under the United States Securities Act of 1933, as amended (the “**Securities Act**”);
4. no form of “general solicitation” or “general advertising” (as those terms are used in Regulation D under the Securities Act) was used by us, including advertisements, articles, notices or other communications in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the Offered Shares in the United States;
5. prior to any sale by us of the Offered Shares in the United States, we caused each purchaser to execute and deliver a Qualified Institutional Buyer Letter in substantially the same form appended to the U.S. Placement Memorandum, copies of which have been delivered to the Company and the Selling Shareholders; and
6. all offers and sales of the Offered Shares in the United States have been conducted by us in accordance with the terms of the Underwriting Agreement.

Terms used in this certificate have the meanings given to them in the Underwriting Agreement unless otherwise defined herein.



**DATED** this \_\_\_\_ day of \_\_\_\_, 2024.

**[UNDERWRITER]**

**[U.S. BROKER-DEALER AFFILIATE]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title: