

EGUANA TECHNOLOGIES INC.

SEVENTH AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

October 1, 2015

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EGUANA TECHNOLOGIES INC.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

AGREEMENT ENTERED INTO AS OF MAY 8, 2009, AS AMENDED ON AUGUST 23, 2010, AS AMENDED ON MARCH 28, 2011, AS AMENDED ON OCTOBER 19, 2011, AS AMENDED ON DECEMBER 27, 2012, AS AMENDED ON APRIL 16, 2013, AS AMENDED ON DECEMBER 8, 2014 AND AS FURTHER AMENDED ON OCTOBER 1, 2015

AMONG: EGUANA TECHNOLOGIES INC., a corporation duly constituted under the *Business Corporations Act* (Alberta), having its head and registered office at 6143-4th Street SE, Unit 3, Calgary, Alberta, T2H 2H9;

(hereinafter referred to as the "**Corporation**")

AND: DHCT II LUXEMBOURG, S.À.R.L., a corporation organized under the laws of Luxembourg, having its head office in Luxembourg, represented herein by the Manager, duly authorized for the purposes as he so declares;

(hereinafter referred to as the "**Lead Investor**")

RECITALS

WHEREAS the Corporation has completed a private placement (the "**Initial Offering**") of units (the "**Units**"), each Unit consisting of one redeemable, 8%, convertible, voting Series 7 First Preferred Share (the "**Series 7 Preferred Shares**") of the Corporation and twenty-eight (28) share purchase warrants of the Corporation (an "**Initial Warrant**"), each Initial Warrant entitling the holder thereof to purchase one (1) Common Share at a price of \$0.30 per share for a period of four (4) years following the closing of the Initial Offering (the "**Initial Closing Date**");

WHEREAS the Units were sold at a price of \$10.00 per Unit for total proceeds of up to \$8,500,000;

WHEREAS the Lead Investor purchased Units under the Initial Offering for total proceeds of up to \$4,500,000 pursuant to a subscription agreement (the "**Initial Subscription Agreement**") between the Lead Investor and the Corporation;

WHEREAS an investor rights agreement was entered into on May 8, 2009 between the Corporation and the Lead Investor in connection with the Initial Offering;

WHEREAS the Corporation has completed subsequent private placements (the "**Subsequent Offering**") August 26, 2010 and October 4, 2010 of (i) 8% redeemable, accretive, voting Series 9 Preferred Shares and Series 10 Preferred Shares convertible at any time

to Common Shares (together, the "**Initial Standby Equity Preferred Shares**"), and (ii) warrants (the "**Initial Additional Warrants**") pursuant to a standby equity commitment agreement dated August 23, 2010 between the Corporation and the Lead Investor (the "**Initial Standby Equity Commitment Agreement**");

WHEREAS in connection with the Subsequent Offering, the Parties hereto entered into an amended and restated investor rights agreement dated August 23, 2010;

WHEREAS the Corporation and the Lead Investor entered into a standby equity commitment agreement dated March 15, 2011 (the "**Standby Equity Commitment Agreement**") providing for a standby equity line of credit to be made available by the Lead Investor to the Corporation pursuant to which the Corporation has issued to the Lead Investor warrants (the "**Additional Warrants**");

WHEREAS in connection with the Standby Equity Commitment Agreement, the Parties hereto entered into a second amended and restated investor rights agreement dated March 28, 2011;

WHEREAS the Corporation and the Lead Investor entered into a second standby equity commitment agreement dated October 19, 2011 (the "**Second Standby Equity Commitment Agreement**") providing for a standby equity line of credit to be made available by the Lead Investor to the Corporation pursuant to which the Corporation has (i) issued to the Lead Investor warrants (the "**Equity Line Warrants**") and (ii) issued to the Lead Investor 8% redeemable, accretive, voting Series 11 Preferred Shares and Series 12 Preferred Shares (together, the "**Equity Line Preferred Shares**") pursuant to and in accordance with the terms and conditions of the Second Standby Equity Commitment Agreement;

WHEREAS in connection with the Second Standby Equity Commitment Agreement, the Parties hereto entered into a third amended and restated investor rights agreement dated October 19, 2011;

WHEREAS the Corporation and the Lead Investor have completed a private placement (the "**Additional Private Placement**") of units pursuant to a subscription agreement dated December 27, 2012, each such unit consisting of one (1) 8% redeemable, accretive, voting Series 13 First Preferred Share (the "**Series 13 Preferred Shares**") of the Corporation and twenty five (25) common share purchase warrants of the Corporation (the "**New Warrants**"), each New Warrant entitling the holder thereof to purchase one (1) Common Share at a price of \$0.50 per Common Share for a period of five (5) years following the closing of the Additional Private Placement;

WHEREAS in connection with the Additional Private Placement, the Parties hereto entered into a fourth amended and restated investor rights agreement dated December 27, 2012;

WHEREAS the Corporation issued to the Lead Investor on March 15, 2013 (i) a \$500,000 8% Six Month Convertible Unsecured Subordinated Debenture of the Corporation (the "**Debenture**"), which Debenture is convertible at any time at the option of the Lead Investor into Series 14 Preferred Shares at \$10 per Series 14 Preferred Shares, and (ii) 4,750,000 warrants of the Corporation (the "**Debenture Warrants**"), each Debenture Warrant entitling the holder

thereof to purchase one (1) Common Share at a price of \$0.105 per Common Shares for a period of six (6) months following the date of issuance of the Debenture Warrants;

WHEREAS on April 16, 2013, pursuant to and in accordance with the terms and conditions of the Debenture, the Lead Investor converted the Debenture into 50,000 Series 14 Preferred Shares (the "**Debenture Conversion**");

WHEREAS in connection with the Debenture Conversion, the Parties hereto entered into a fifth amended and restated agreement in order to grant protective rights, information rights, Board representation rights, pre-emptive rights, rights of first refusal, registration rights and other rights as set forth below;

WHEREAS on December 8, 2014, the Lead Investor, at the request of the Corporation, caused the automatic conversion of all of the shares of each of the Series 7 Preferred Shares, Series 9 Preferred Shares, Series 10 Preferred Shares, Series 11 Preferred Shares, Series 12 Preferred Shares, Series 13 Preferred Shares and Series 14 Preferred Shares (the "**Preferred Shares Conversion**");

WHEREAS in connection with the Preferred Shares Conversion, the Parties hereto entered into a sixth amended and restated investor rights agreement dated December 8, 2014;

WHEREAS on October 1, 2015, the Corporation completed an offering of Common Shares on a private placement basis whereby the Common Shares were sold at a price of \$0.0525 per Common Share for total proceeds of \$3,517,500 (the "**Offering**");

WHEREAS in connection with the Offering, the Corporation, the Lead Investor, HSBC Bank Canada and Doughty Hanson & Co Technology II LP entered into a termination and release agreement dated October 1, 2015 pursuant to which the Standby Equity Commitment Agreement, as amended on March 1, 2012, April 30, 2012, June 13, 2013 and December 20, 2013, and the Assignment Agreement were terminated (the "**Termination and Release Agreement**"); and

WHEREAS as a result of the Termination and Release Agreement, the parties desire to enter into this Seventh Amended and Restated Investor Rights Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree hereto as follows:

SECTION 1 GENERAL

1.1 Definitions

As used in this Agreement the following terms shall have the following respective meanings:

- (a) "**Additional Private Placement**" has the meaning set forth in the preamble hereto;
- (b) "**Additional Warrants**" has the meaning set forth in the preamble hereto;
- (c) "**Affiliate**" means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more Persons controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "Control" (including, with correlative meanings, the terms "Controlling", "Controlled by" and "under common Control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise);
- (d) "**Agreement**" means this seventh amended and restated investor rights agreement by and between the Lead Investor and the Corporation and all schedules hereto, as well as any amendment or modification which might be made or added hereto in writing as permitted by Section 8.3 from time to time;
- (e) "**Articles**" means the Articles of Incorporation of the Corporation;
- (f) "**Assignment Agreement**" means the assignment agreement dated March 28, 2011 entered into between the Company, the Lead Investor and HSBC Bank Canada;
- (g) "**Board**" means the board of directors of the Corporation;
- (h) "**Business**" means the designing and manufacturing of advanced power inverters for the solar power industry;
- (i) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Alberta;
- (j) "**Canadian Securities Authorities**" means any of the British Columbia Securities Commission, Alberta Securities Commission, Saskatchewan Securities Commission, Manitoba Securities Commission, Ontario Securities Commission, l'Autorité des marchés financiers (Québec), Justice Securities Administration (New Brunswick), Nova Scotia Securities Commission,

Registrar of Securities (Prince Edward Island), Director of Securities (Government of Newfoundland and Labrador), and any of their successors;

- (k) "**Canadian Securities Laws**" means all applicable Canadian securities laws, the respective regulations, rules and orders made thereunder, and all applicable policies and notices issued by the Canadian Securities Authorities in the applicable jurisdictions in Canada;
- (l) "**Change of Control**" means:
 - (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group other than the Lead Investor and its Affiliates, of capital stock of the Corporation representing more than a majority of the aggregate ordinary voting power represented by the issued and outstanding voting securities of the Corporation;
 - (ii) the consummation of any merger, consolidation, take-over bid, reorganization, amalgamation or similar scheme or arrangement as a result of which the Shareholders of the Corporation immediately prior to such transaction cease to own, directly or indirectly, beneficially or of record, at least a majority of the voting power of the outstanding shares of capital stock of the surviving or resulting corporation in such transaction;
 - (iii) the adoption of a plan or the initiation of a process relating to any insolvency, restructuring or reorganization process, voluntary liquidation, dissolution or winding-up of the Corporation;
 - (iv) the occurrence, during any period of 24 consecutive months, of a majority of the members of the Board or other equivalent governing body of the Corporation ceasing to be composed of individuals (i) who were members of that Board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that Board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board or equivalent governing body or (iii) whose election or nomination to that Board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that Board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more Directors by any person or group other than a solicitation for the election of one or more Directors by or on behalf of the Board).

- (m) "**Common Shares**" means the common shares in the capital of the Corporation;
- (n) "**Corporation**" has the meaning set forth in the preamble hereto;
- (o) "**Debenture**" has the meaning set forth in the preamble hereto;
- (p) "**Debenture Conversion**" has the meaning set forth in the preamble hereto;
- (q) "**Debenture Warrants**" has the meaning set forth in the preamble hereto;
- (r) "**Demand Registration**" has the meaning ascribed thereto in Section 6.1;
- (s) "**Designated Registrable Securities**" has the meaning ascribed thereto in Section 6.1;
- (t) "**DH Director**" has the meaning ascribed thereto in Section 4.1(a);
- (u) "**Director**" means a member of the Board;
- (v) "**Distribution**" means a distribution of Registrable Securities to the public by way of a Prospectus under Canadian Securities Laws in any applicable jurisdictions in Canada or by way of Registration Statement pursuant to U.S. Securities Laws in the United States;
- (w) "**Equity Line Preferred Shares**" means the Series 11 First Preferred Shares and the Series 12 First Preferred Shares in the capital of the Corporation issued to the Lead Investor in connection with the Second Standby Equity Commitment Agreement;
- (x) "**Equity Line Warrants**" has the meaning set forth in the preamble hereto;
- (y) "**Equity Securities**" has the meaning ascribed thereto in Section 5.1(a);
- (z) "**Equity Shares**" means the Common Shares and the Non-Voting Common Shares;
- (aa) "**Exchange Act**" means the United States *Securities Exchange Act of 1934*, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time;
- (bb) "**Excluded Securities**" has the meaning ascribed thereto in Section 5.2;
- (cc) "**Fixed Conversion Price**" means the Fixed Conversion Price as defined in the Series 7 Preferred Shares, as provided for in the Articles, and as adjusted in accordance with such Articles;
- (dd) "**Fully Diluted Basis**" means, with respect to the number of outstanding Equity Shares at any time, the number of Equity Shares that would be

outstanding if all rights to acquire Equity Shares were exercised excluding, for the purposes of this calculation, all Common Shares issuable upon the conversion of any options under the Stock Option Plan or any other stock incentive plan;

- (ee) "**HSBC Bank Canada**" means HSBC Bank Canada and its successors and assigns;
- (ff) "**Incidental Registration**" has the meaning ascribed thereto in Section 6.2;
- (gg) "**Initial Additional Warrants**" has the meaning set forth in the preamble hereto;
- (hh) "**Initial Closing Date**" has the meaning set forth in the preamble hereto;
- (ii) "**Initial Investor Rights Agreement**" means the investor rights agreement entered into by the Corporation and the Lead Investor on May 8, 2009;
- (jj) "**Initial Offering**" has the meaning set forth in the preamble hereto;
- (kk) "**Initial Standby Equity Commitment Agreement**" has the meaning set forth in the preamble hereto;
- (ll) "**Initial Standby Equity Preferred Shares**" means the Series 9 First Preferred Shares and the Series 10 First Preferred Shares in the capital of the Corporation issued to the Lead Investor pursuant to the Initial Standby Equity Commitment Agreement;
- (mm) "**Initial Subscription Agreement**" has the meaning set forth in the preamble hereto;
- (nn) "**Initial Warrant**" has the meaning set forth in the preamble hereto;
- (oo) "**Lead Investor**" has the meaning set forth in the preamble hereto;
- (pp) "**Lock-Up Agreements**" means those lock-up agreements entered into in connection with the Initial Offering, the Subsequent Offering, the Standby Equity Commitment Agreement, the Second Standby Equity Commitment Agreement and the Additional Private Placement;
- (qq) "**New Warrants**" has the meaning set forth in the preamble hereto;
- (rr) "**Non-Voting Common Share**" means the non-voting common shares in the capital of the Corporation that may be issued and outstanding from time to time;
- (ss) "**Offering**" has the meaning set forth in the preamble hereto;
- (tt) "**Participation Right**" has the meaning ascribed thereto in Section 5.1(a);

- (uu) "**Participation Right Acceptance Notice**" has the meaning ascribed thereto in Section 5.1(c);
- (vv) "**Participation Right Notice Period**" has the meaning ascribed thereto in Section 5.1(c);
- (ww) "**Participation Right Offer Notice**" has the meaning ascribed thereto in Section 5.1(b);
- (xx) "**Parties**" means collectively the Lead Investor and the Corporation;
- (yy) "**Passport Decision Document**" means, in respect of a Canadian Securities Authority, the decision document, receipt or similar notice or document in respect of the Prospectus issued in accordance with the Process for Prospectus Reviews;
- (zz) "**Permitted Assign**" shall mean any Affiliate of a Lead Investor or any of their respecting Permitted Assigns including, without limitation, any member, partner, shareholder or former member, partner or shareholder of a Lead Investor;
- (aaa) "**Permitted Borrowings**" has the meaning ascribed thereto in Section 2.1(a);
- (bbb) "**Person**" means any individual, corporation or company with or without share capital, partnership, joint venture, association, trust, unincorporated organization, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (ccc) "**Process for Prospectus Reviews**" means process for prospectus review provided for under National Policy 11-202- *Process for Prospectus Review in Multiple Jurisdictions*;
- (ddd) "**Prospectus**" means a preliminary prospectus, an amended preliminary prospectus or a final prospectus of the Corporation in respect of its securities which has been filed, in the form selected at the discretion of the Corporation either of a short form or of a long form prospectus, with the applicable Canadian Securities Authorities and a receipt issued therefore, or a Passport Decision Document issued in connection therewith, including all amendments and all supplements thereto and all material incorporated by reference (or deemed to be incorporated by reference) therein;
- (eee) "**Qualified Public Offering**" means the consummation of an underwritten public offering pursuant to a receipted prospectus under the Securities Act, as amended, or similar document filed under other applicable securities laws in Canada or the United States, with a price per share of three (3) times the Fixed Conversion Price and aggregate proceeds in excess of \$20,000,000;

- (fff) "**Receipt**" means a final receipt (or Passport Decision Document or an equivalent document) issued in respect of a Prospectus;
- (ggg) "**Register**", "**Registered**" and "**Registration**" unless the context requires otherwise, refers to (i) the filing of a Registration Statement in compliance with the U.S. Securities Act and the declaration or ordering of effectiveness of such Registration Statement for Distribution of the Registrable Securities in the United States and/or (ii) the filing of a Prospectus for the purposes of qualifying the Registrable Securities under the Canadian Securities Laws for Distribution in any or all of the provinces and territories of Canada;
- (hhh) "**Registrable Securities**" means:
 - (i) any Common Shares issued or issuable upon the conversion of the Warrants;
 - (ii) any Common Shares;
 - (iii) any additional securities of the Corporation issued to or held by the Lead Investor; and
 - (iv) any securities of the Corporation issued in exchange for or in replacement of the securities referred to in clauses (i) and (ii) above.
- (iii) "**Registration Statement**" shall mean any Registration Statement filed by the Corporation with the SEC for an offering under the U.S. Securities Act (other than a registration statement on Form S-8 or Form F-4, or their successors, or any other form for a similar limited purpose) and all amendments and supplements to any such Registration Statement, including pre- and post-effective amendments, in each case including the prospectus contained therein, all exhibits thereto and all material incorporated by reference (or deemed to be incorporated by reference) therein;
- (jjj) "**Request**" has the meaning ascribed thereto in Section 6.1(a);
- (kkk) "**SEC**" means the United States Securities and Exchange Commission;
- (lll) "**Second Standby Equity Commitment Agreement**" has the meaning set forth in the preamble hereto;
- (mmm) "**Securities Act**" means the *Securities Act* (Alberta), as it may be amended from time to time, and any successor legislation;
- (nnn) "**Securities Laws**" means the Canadian Securities Laws and the U.S. Securities Laws;
- (ooo) "**Securities Regulators**" has the meaning ascribed thereto in Schedule A of this Agreement;

- (ppp) "**Series 7 Preferred Shares**" has the meaning set forth in the preamble hereto;
- (qqq) "**Series 8 Preferred Shares**" means the Series 8 First Preferred Shares in the capital of the Corporation;
- (rrr) "**Series 9 Preferred Shares**" means the Series 9 First Preferred Shares in the capital of the Corporation;
- (sss) "**Series 10 Preferred Shares**" means the Series 10 First Preferred Shares in the capital of the Corporation;
- (ttt) "**Series 11 Preferred Shares**" means the Series 11 First Preferred Shares in the capital of the Corporation;
- (uuu) "**Series 12 Preferred Shares**" means the Series 12 First Preferred Shares in the capital of the Corporation;
- (vvv) "**Series 13 Preferred Shares**" means the Series 13 First Preferred Shares in the capital of the Corporation;
- (www) "**Series 14 Preferred Shares**" means the Series 14 First Preferred Shares in the capital of the Corporation;
- (xxx) "**Shareholders**" means the shareholders of the Corporation;
- (yyy) "**Short-Form Eligible**" means the ability of the Corporation to file a short-form Prospectus under Canadian Securities Laws or a short-form Registration Statement on Form S-3 (or its equivalent) under U.S. Securities Laws;
- (zzz) "**Standby Equity Commitment Agreement**" has the meaning set forth in the preamble hereto;
- (aaaa) "**Stock Option Plan**" means the existing stock option plan of the Corporation, last approved by the Shareholders on September 10, 2010;
- (bbbb) "**Subscription Agreement**" has the meaning set forth in the preamble hereto;
- (cccc) "**Subsequent Offering**" has the meaning set forth in the preamble hereto;
- (dddd) "**Subsidiary**" means, with respect to a corporation (the "**Parent Corporation**"), a corporation that is (a) Controlled by the Parent Corporation, (b) Controlled by one or more corporations each of which is Controlled by the Parent Corporation, or (c) a Subsidiary of a corporation that is the Parent Corporation's Subsidiary;
- (eeee) "**Termination and Release Agreement**" has the meaning set forth in the preamble hereto;
- (ffff) "**TSXV**" has the meaning ascribed thereto in Section 3.3;

(gggg) "**U.S. Securities Act**" shall mean the United States *Securities Act of 1933*, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time;

(hhhh) "**U.S. Securities Laws**" means all applicable United States securities laws, including without limitation the U.S. Securities Act, the Exchange Act and applicable state or "blue sky" laws and the respective regulations, rules and orders promulgated thereunder, and all applicable policies and notices issued by the SEC;

(iiii) "**Units**" has the meaning set forth in the preamble hereto; and

(jjjj) "**Warrants**" means the Debenture Warrants, New Warrants, the Equity Line Warrants, the Additional Warrants, the Initial Additional Warrants and the Initial Warrants, collectively.

1.2 Recital and Schedule

The recitals and following schedule form an integral part of this Agreement:

Schedule "A" Registration Procedures.

1.3 Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect in any way the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in the currency of Canada.

1.6 Canadian Generally Accepted Accounting Principles

In this Agreement, except to the extent otherwise expressly provided, references to "**Canadian generally accepted accounting principles**" mean, for all principles stated in the Handbook of the Canadian Institute of Chartered Accountants, the principles so stated.

**SECTION 2
LEAD INVESTORS'
PROTECTIVE PROVISIONS**

2.1 General Protective Provisions

As long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Corporation shall not, without the consent of the Lead Investor:

- (a) borrow any funds other than borrowing from a federal, provincial, or state government agency or Crown corporation, a chartered bank, trust company, credit union or other similar institution to a maximum of \$10 million for working capital purposes, to acquire capital assets for the Business of the Corporation, to manufacture products for sale, to provide performance bonds or to liquidate accounts receivable ("**Permitted Borrowings**");
- (b) guarantee any indebtedness or grant any security over the assets of the Corporation or its Subsidiaries of any borrowings except for Permitted Borrowings;
- (c) amend, alter or repeal the provisions of the Series 8 Preferred Shares whether by merger, consolidation or otherwise, so as to affect adversely any right, preference, privilege or voting power of the Series 8 Preferred Shares;
- (d) amend the Articles or by-laws of the Corporation so as to affect adversely any right, preference, privilege or voting power of the Series 8 Preferred Shares;
- (e) reclassify the Corporation's outstanding securities so as to affect adversely any right, preference, privilege or voting power of the Series 8 Preferred Shares;
- (f) increase or decrease the size of the Board of Directors;
- (g) amend the Stock Option Plan of the Corporation or create a new equity incentive plan;
- (h) materially change the nature of the Corporation's Business ;
- (i) proceed with any sale or other disposition by the Corporation of all or substantially all of its assets;
- (j) enter into any transaction or series of related transactions effecting a merger, amalgamation, arrangement, consolidation, business combination or any transaction that constitutes a Change of Control;
- (k) delist from any stock exchange where its securities are listed or apply for a listing of its securities on any stock exchange; or
- (l) initiate or complete a Qualified Public Offering.

2.2 Special Protective Provisions

As long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Corporation shall not, without the consent of the Lead Investor, complete any offering or placement of any preferred shares, any convertible debt or any other securities ranking senior (including as to dividends, voting rights or rights upon liquidation) to any of the Common Shares.

2.3 Consent Request Procedure

In order to obtain the prior consent required under Sections 2.1 and 2.2, the Corporation shall send to the Lead Investor a notice explaining the action requiring their consent, along with all reasonable documentation and information that is available to the Corporation and that is necessary to make a decision or that is reasonably requested by the Lead Investor. The Lead Investor shall be entitled to exercise such rights relating to the conduct of the affairs and of the Business of the Corporation by giving notice to the Corporation within ten (10) Business Days following receipt of the notice from the Corporation, failing which, the Lead Investor shall be deemed to have given their consent.

SECTION 3 COVENANTS OF THE CORPORATION.

3.1 Basic Financial Information and Reporting

- (a) the Corporation will furnish the Lead Investor, as soon as practicable, but in any event no more than ninety (90) days after the end of each fiscal year, a proposed budget and business plan for the next fiscal year, prepared on a quarterly basis, including a balance sheet, a statement of operations and deficit (profit) and a statement of cash flows (and such other statements as reasonably requested by the Lead Investor) for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Corporation;
- (b) the Corporation will furnish the Lead Investor such other information regarding the operations, Business, affairs and financial condition of the Corporation as the Lead Investor may reasonably request; and
- (c) the Lead Investor shall have the right, subject to reasonable notice thereof, to (i) visit and inspect any of the financial records or properties of the Corporation or any of its Subsidiaries; and (ii) discuss with its officers, employees and advisors (including independent accountants) the affairs, finances and accounts of the Corporation or of any of its Subsidiaries.

3.2 Confidentiality of Records

The Lead Investor agrees to use, and to use its reasonable commercial efforts to insure that its authorized representatives use, the same degree of care as the Lead Investor uses to protect its own confidential information to keep confidential any information communicated

which the Corporation identifies as being confidential (so long as such information is not in the public domain), except that the Lead Investor may disclose such confidential information to any Affiliate of the Lead Investor for the purpose of evaluating its investment in the Corporation as long as such Affiliate is advised of the confidential nature of such information, agrees to keep such information confidential. If such information is disclosed to an Affiliate by the Lead Investor, the Affiliate will assume the same obligations as the Lead Investor contained in this Section 3.2. In furtherance of the foregoing, the Lead Investor assumes the same fiduciary obligations with respect to confidential information on the Corporation as are imposed by law on the DH Director as a director of the Corporation.

For greater certainty, the Corporation acknowledges and allows George Powlick (both as a Director and representative of the Lead Investor) to share all the information received by him in his capacity as Director with the Lead Investor provided that the Lead Investor shall be bound by this Section 3.2 with respect to such information.

3.3 Listing of Common Shares

The Corporation shall maintain its listing on the TSX Venture Exchange ("TSXV") and make, on a timely basis, all filings prescribed under the applicable Canadian Securities Law and under the rules of the TSXV. If the Corporation commences to file periodic or other reports with the SEC under the U.S. Securities Act or the Exchange Act, it shall thereafter make, on a timely basis, all required filings under the applicable U.S. Securities Laws.

3.4 Reservation of Common Shares Issuable Upon Exercise of the Warrants

The Corporation shall, at all times, reserve and keep available out of its authorized but unissued Common Shares such number of Common Shares as shall from time to time be sufficient to effect the issuance of Common Shares to be issued upon exercise of the Warrants. If, at any time, the number of authorized but unissued Common Shares shall not be sufficient to effect the foregoing, the Corporation shall take such corporate actions which, in the opinion of counsel, are necessary to increase the number of authorized but unissued Common Shares to such number of Common Shares as shall be sufficient for such purpose.

3.5 Lock-Up Agreements

The Corporation hereby acknowledges and agrees that it will not amend, alter or waive any Lock-Up Agreement or provision thereof without the prior approval of the Lead Investor.

SECTION 4 COMPOSITION AND OPERATIONS OF THE BOARD

4.1 Board Composition and Representation

- (a) The Board shall consist at all times of an odd number of Directors. As of the Initial Closing Date, the Corporation agrees that it shall have five (5) Directors, one of which shall be appointed on the Initial Closing Date by the Lead Investor and appointed by the Board. The Lead Investor shall be entitled to designate

nominees for election or appointment to the Board (the "**DH Directors**") as follows:

- (i) as long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Lead Investor shall be entitled to designate one (1) DH Director in addition to having the right to vote for the directors elected by the Shareholders of the Corporation;
- (ii) provided that the Lead Investor consents to an increase in the size of the Board pursuant to Section 2.1 of this Agreement, should the Board be expanded to include another Director, the Corporation will ensure that another outside Director will be added to the Board, increasing the Board to seven (7) Directors. So long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Lead Investor shall have the right to designate an additional outside DH Director to the Board who shall be independent of the Lead Investor and the Corporation.

The parties hereto acknowledge and agree that the Lead Investor is entitled to designate and appoint certain Directors to the Board pursuant to the terms of the Series 8 Preferred Shares and that this provision is intended to be in furtherance of such rights. In no event will this Section 4.1 be construed to duplicate the rights granted to the Lead Investor pursuant to the terms of the Series 8 Preferred Shares. In the event that the Lead Investor no longer holds any Series 8 Preferred Shares and is therefore not entitled to elect Directors to the Board pursuant to the terms thereof, this Section 4.1 shall survive and remain in full force and effect and the Lead Investor shall have the right to designate Directors in accordance with the terms hereof.

- (b) For so long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, one DH Director shall have the right to be a member of any standing committee of the Board.
- (c) Subject to the DH Director(s) consenting to serve as a Director of the Corporation, for so long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Corporation shall cause the DH Director(s) to be included as nominees proposed by the Board to the Shareholders for election to the Board of each future meeting of the Shareholders where Directors are to be elected by Shareholders. The Corporation shall use its commercially reasonable efforts to cause the election of such DH Director(s) at such meetings and shall solicit proxies in favour of the election of such DH Director(s) at such meetings. At all such meetings where Shareholders shall elect Directors, the Corporation shall, subject to applicable law, ensure that Shareholders will only be able to vote "for" the

election of a Director or in the alternative, have the option to "withhold" their vote.

- (d) In the event that a DH Director shall cease to serve as a Director of the Corporation, whether due to such DH Director's death, disability, resignation or removal, the Corporation shall cause the Board to appoint a replacement DH Director designated by the Lead Investor to fill the vacancy created by such death, disability, resignation or removal.
- (e) Subject to applicable law, the designation of a Director by the Lead Investor shall be made by written notice sent to the Corporation prior to the mailing of shareholder materials with respect to an annual or special meeting of Shareholders. The Lead Investor shall advise the Corporation of the identity of the DH Director(s) at least fifty (50) days prior to any meeting of Shareholders at which directors of the Corporation are to be elected or within ten (10) days of being notified of the record date for such a meeting. If the Lead Investor does not advise the Corporation of the identity of any DH Director(s) prior to such deadline, then the Lead Investor will be deemed to have nominated its incumbent nominee(s).

4.2 Board and Board Committee Operations

The Corporation agrees and undertakes that, so long as the Lead Investor, together with its Affiliates, own in the aggregate 10% or more of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis:

- (a) a quorum of any Board meeting shall consist of a majority of the Directors then in office, including at least one DH Director;
- (b) a quorum of any standing Board committee(s) shall, subject to applicable law and fiduciary duties of the Board, consist of a majority of the committee members including at least one DH Director. If a quorum is not present at any Board or Board Committee meeting, such Board or Board committee meeting shall be adjourned until a date no sooner than the second (2nd) Business Day following the date of the initial Board or Board committee meeting;
- (c) the quorum at the reconvened Board or Board committee meeting shall be constituted by a majority of the Directors or Board committee members then in office, regardless of the absence of a DH Director as otherwise required in Section 4.2(a) or 4.2(b) to constitute a quorum but only if such DH Director were absent from such first Board or Board committee meeting;
- (d) all notices of Board or Board committee meetings shall be delivered by hand or transmitted by facsimile or e-mail at least five (5) Business Days prior to the date of the Board or Board committee meeting. However, emergency Board or Board committee meetings may be called by the Chairman of the Board or of the Board committee in the case of a situation involving matters upon which prompt action is deemed necessary by giving notice at least two (2) Business

Days prior to the date of such Board or Board committee meeting, except that no notice shall be necessary if all the Directors are present, or if a quorum is present and those Directors who are absent waive notice of Board or Board committee meeting. All notices of Board or Board committee meetings shall specify the time, date and place of the Board or Board committee meeting and contain a brief but complete summary of all business on the agenda of the Board or Board committee meeting;

- (e) each Director, including for greater certainty DH Directors, who is not an officer or employee of the Corporation shall be reimbursed by the Corporation for the reasonable travel and other expenses incurred by him to attend Board or Board committee meetings; and
- (f) any Director may participate in a Board or Board committee meeting by means of a telephonic, electronic or other communication facility. A Director or Board committee member participating by such means is deemed to be present at the Board or Board committee meeting.

**SECTION 5
PARTICIPATION RIGHT
GRANTED BY THE CORPORATION**

5.1 Exercise of Participation Right

- (a) So long as the Lead Investor, together with its Affiliates, own in the aggregate at least 10% of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, the Lead Investor shall have a right (the "**Participation Right**") to subscribe to its *pro rata* share (as defined below) of any Equity Securities (as defined below) that the Corporation may, from time to time, sell and issue after the Initial Closing Date, other than Excluded Securities (as such term is later defined), subject to any TSXV requirements or other stock exchange requirements as may be applicable. For purposes of this Section 5.1(a), the Lead Investor's *pro rata* share of any Equity Securities is equal to the ratio of (a) the number of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis which the Lead Investor is deemed to be a holder of immediately prior to the issuance of such Equity Securities to (b) the total number of then issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis. The term "**Equity Securities**" shall mean: (i) any Common Shares, Non-Voting Common Shares, preferred shares or other equity security of the Corporation; (ii) any security convertible, with or without consideration, into any Common Shares, Non-Voting Common Shares, preferred shares or other equity security (including any option to purchase such a convertible security); (iii) any security carrying any warrant or right to subscribe to or purchase any Common Shares, Non-Voting Common Shares, preferred shares or other equity security; or (iv) any such warrant or right. In the event that such a Participation Right shall be subject to Shareholders' approval, the Corporation shall use its commercially reasonable efforts to cause

the approval of such Participation Right at meeting convened as soon as practicable in order to allow the Lead Investor in exercise its Participation Right. At such meeting, the Corporation shall solicit proxies from the Shareholders to obtain such approval.

- (b) the Corporation shall send a written notice to the Lead Investor (the "**Participation Right Offer Notice**") specifying the terms and conditions contained in the proposed offering, the total number of then issued and outstanding Equity Shares, the sale price in cash for the Equity Securities offered and the terms of payment of such sale price;
- (c) the Lead Investor shall have a period of fifteen (15) Business Days from the date of the Participation Right Offer Notice (the "**Participation Right Notice Period**") to notify the Corporation in writing (the "**Participation Right Acceptance Notice**") of its acceptance of the offer to purchase the Equity Securities. Such Participation Right Acceptance Notice shall indicate and certify the number of Equity Shares issued and outstanding the Lead Investor is deemed to be a holder of immediately prior to the issuance of such Equity Securities, shall include a calculation of the Lead Investor's *pro rata* share, and shall specify the number of Equity Securities the Lead Investor wishes to acquire, which may be fewer than the Lead Investor's full *pro rata* share as calculated pursuant to Section 5.1(a). If the Lead Investor fails to deliver a Participation Right Acceptance Notice within the Participation Right Notice Period, then any right of the Lead Investor to subscribe for any of the Equity Securities is extinguished. If the Lead Investor gives a notice to the Corporation confirming its agreement to purchase all or a portion of its *pro rata* share of the Equity Securities, the sale of the Equity Securities to the Lead Investor shall be completed within thirty (30) Business Days of the expiry of the Participation Right Notice Period or such shorter period required by the TSXV or other applicable stock exchange; and
- (d) if the Corporation has not issued the Equity Securities within ninety (90) Business Days of the expiry of the Participation Right Notice Period, the Corporation shall not thereafter proceed with such offering without providing the Lead Investor with another opportunity to exercise its Participation Right.

5.2 Excluded Securities

The Participation Right shall have no application to any of these respective Equity Securities (the "**Excluded Securities**"):

- (a) Common Shares issuable under the Stock Option Plan as adjusted for any stock dividends, combinations, splits, recapitalizations and the like issued or to be issued after the date of the execution of the Initial Investor Rights Agreement to employees, officers or directors of, or consultants to the Corporation or pursuant to stock option plans or other similar employee equity incentive plans that are approved by the Board, a majority of the Shareholders after the date of

the execution of the Initial Investor Rights Agreement and the Lead Investor pursuant to Section 2.1;

- (b) Common Shares issued upon the exercise of any rights having been granted by the Corporation as of the date of the Initial Investor Rights Agreement, pursuant to the terms of agreements entered into by the Corporation before the date of the Initial Investor Rights Agreement or upon the exercise of any options and warrants of the Corporation issued and outstanding as of the date of the Initial Investor Rights Agreement;
- (c) Common Shares issued upon the exercise of any rights granted by the Corporation after the date of the Initial Investor Rights Agreement provided that the issuance of such rights was made subject to the exercise of the Participation Right, if applicable;
- (d) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination or strategic alliance approved by the Board and the Lead Investor as pursuant to Section 2.1;
- (e) Common Shares issued in connection with any stock split, stock dividend or recapitalization by the Corporation; and
- (f) securities of the Corporation issued in connection with any business development or licensing arrangement of the Corporation with third parties pursuant to any *bona fide* third party collaboration agreement.

SECTION 6 REGISTRATION RIGHTS

6.1 Demand Registration Rights

- (a) At any time the Lead Investor may, provided that the Lead Investor, or one of its Affiliates, continues to hold at least 10% of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis, require the Corporation to file a Prospectus and/or a Registration Statement, as applicable, and take such other steps as may be necessary to facilitate a secondary offering in Canada or in the United States of all or any portion of the Registrable Securities held by the Lead Investor (the "**Demand Registration**"). Any such request shall be made by a notice in writing (a "**Request**") to the Corporation and shall specify the number and the class or classes of Registrable Securities to be sold (the "**Designated Registrable Securities**") by the Lead Investor, the intended method of disposition, whether such offer and sale shall be made by an underwritten public offering and the jurisdiction(s) in which the filing is to be effected. The Corporation shall, subject to the applicable Securities Laws, use its commercially reasonable efforts to file one or more Prospectuses and/or Registration Statements, as applicable, in compliance with applicable Securities Laws, in order to permit the offer and sale or other disposition or Distribution

in Canada or in the United States, as applicable, of all or any portion of the Designated Registrable Securities of the Lead Investor having made such a Request. The Parties shall cooperate in a timely manner in connection with such disposition and the procedures in Schedule A shall apply;

- (b) the Corporation shall not be obliged to effect:
 - (i) a Demand Registration in the United States if the Corporation has not previously listed Common Shares (including by way of merger and another listed company) on a stock exchange located in the United States;
 - (ii) more than two Demand Registrations unless the Corporation is Short-Form Eligible, in which case, the Lead Investor would have unlimited Demand Registration rights;
 - (iii) a Demand Registration in the event the Corporation determines in its good faith judgment that (i) either (A) the effect of the filing of a Prospectus or of a Registration Statement, as applicable, would impede the ability of the Corporation to consummate a transaction that would otherwise require the approval of the Lead Investor; or (B) there exists at the time material non-public information relating to the Corporation the disclosure of which would be adverse to the Corporation, and (ii) that it is therefore in the best interests of the Corporation to defer the filing of a Registration Statement, as applicable, at such time, in which case the Corporation's obligations under this Section 6.1 will be deferred for a period of not more than ninety (90) days from the date of receipt of the Request of the Lead Investor;
 - (iv) an underwritten Demand Registration in respect of a number of Registrable Securities that is expected to result in gross sale proceeds of less than \$7 million;
- (c) in the case of an underwritten public offering of Registrable Securities initiated pursuant to this Section 6.1, the Lead Investor shall have the right to select the managing underwriter(s) and the counsel retained which will perform such offering, provided, however, that the Lead Investor's selection will be subject to the approval of the Corporation, such approval not to be unreasonable withheld or delayed.
- (d) if at any time the Lead Investor requests a Demand Registration, the Corporation shall have the right, within forty-eight (48) hours of receipt of such request, to notify the Lead Investor of its intention to register for distribution to the public under such Prospectus and/or Registration Statement an offering of Common Shares of the Corporation from treasury. The Lead Investor shall use all reasonable efforts to include in the proposed distributions such number of Common Shares of the Corporation as the Corporation shall request, upon the same terms (including the method of distribution) as such Demand Registration; provided that the Lead Investor shall not be required to include

any such Common Shares in any such Demand Registration if the Lead Investor is advised by its lead underwriter or counsel for the offering that in its good faith opinion the inclusion of such securities may materially and adversely affect the price or success of the offering or otherwise limit the number of shares able to be sold by the Lead Investor in connection with such offering.

6.2 Incidental Registrations

Each time the Corporation elects to proceed with the preparation and filing of a Prospectus and/or Registration Statement under any Securities Laws in connection with a proposed Distribution of any of its securities for cash, whether by the Corporation or any of its security holders, the Corporation shall give written notice thereof to the Lead Investor as soon as practicable (but not later than thirty (30) days prior to the initial filing of the Prospectus and/or Registration Statement). In such event, the Lead Investor shall be entitled, by notice in writing given to the Corporation within ten (10) days after the receipt of any such notice by the Lead Investor, to require that the Corporation cause any or all of the Registrable Securities (the "**Designated Registrable Securities**") held by the Lead Investor to be included in such prospectus (such qualification being hereinafter referred to as an "**Incidental Registration**"). Notwithstanding the foregoing:

- (a) in the event the lead underwriter for the offering advises the Corporation and the Lead Investor that in its good faith opinion, the inclusion of such securities may materially and adversely affect the price or success of the offering, the Corporation shall include in such Registration, in the following priority: (i) the number of securities the Corporation proposes to sell; and (ii) a proportion of the Designated Registrable Securities requested to be included in such Registration (representing no less than 30% of the number of securities to be issued in connection with the proposed offering), established *pro rata* among the respective holders thereof on the basis of each such holder's total holdings of Registrable Securities; and
- (b) the Corporation may at any time, and without the consent of the Lead Investor, abandon the proposed offering in which the Lead Investor has requested to participate. The Lead Investor may elect to withdraw from such underwriting by written notice to the Corporation and the underwriter, delivered at least five (5) Business Days prior to the effective date of the Registration Statement, without incurring any liability to the Corporation or the other holders. Any Registrable Securities excluded or withdrawn from such underwriting will be excluded and withdrawn from the registration and/or qualification.

The Lead Investor will have the right to withdraw its request for inclusion of its Registrable Securities in any Prospectus or Registration Statement, as applicable, pursuant to this Section 6.2 by giving written notice to the Corporation of its request to withdraw; provided, however, that:

- (i) such request must be made in writing five (5) Business Days prior to the execution of the underwriting agreement (or such other similar agreement) with respect to such offering; and
- (ii) such withdrawal will be irrevocable and, after making such withdrawal, the Lead Investor will no longer have any right to include its Registrable Securities in the offering pertaining to which such withdrawal was made.

6.3 Expenses

All expenses incident to the Corporation's performance of or compliance with this Section 6, including, without limitation, (i) securities regulators, stock exchange registration listing and filing fees, (ii) fees and expenses in compliance with Securities Laws, (iii) printing and copying expenses, (iv) messenger and delivery expenses, (v) expenses incurred in connection with any road show, (vi) reasonable fees and disbursements of counsel (including counsel for the Lead Investor), (vii) fees and disbursements of all independent public accountants (including the expenses of any audit and/or "comfort" letter) and fees and expenses of any other special experts retained by the Corporation, and (viii) any other fees and disbursements of underwriters customarily paid by issuers or sellers of securities shall be borne by the Corporation, regardless of whether a receipt is issued for a Prospectus and/or a Registration Statement has been declared effective, as applicable. The Corporation will, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any audit, and fees and expenses of any Person, including special experts, retained by the Corporation. In connection with any registration of Registrable Securities pursuant to Section 6 hereof, the Lead Investor may select a counsel and the reasonable fees and expenses of such counsel shall be borne by the Corporation. Notwithstanding the foregoing, in connection with any registration hereunder, the Lead Investor shall pay all underwriting discounts and commissions and any transfer taxes attributable to the Registrable Securities to be sold by the Lead Investor.

6.4 Other Sales

After receipt by the Corporation of a Request, the Corporation shall not, without the prior written consent of the Lead Investor, authorize, issue or sell Common Shares or Equity Securities in any jurisdiction or agree to do so or publically announce any intention to do so (except for securities issued pursuant to any legal obligations in effect on the date of the Request or pursuant to any stock option plan or equity incentive plan) until the date which is ninety (90) days after the later of (a) the date on which receipts or declarations of effectiveness, as the case may be, are issued under all Securities Laws for the Prospectus and/or Registration Statement filed in connection with such Demand Registration and (b) the completion of the offering contemplated by the Demand Registration.

6.5 Future Registration Rights

The Corporation shall not grant registration rights without the consent of the Lead Investor unless the granting of such registration rights does not limit, in any material respect, the registration rights granted to the Lead Investor pursuant to this Agreement and such

registration rights are not materially more favorable to the grantee than the registration rights granted to the Lead Investor.

SECTION 7 DUE DILIGENCE; INDEMNIFICATION

7.1 Preparation; Reasonable Investigation

In connection with the preparation and filing of any Prospectus or Registration Statement as herein contemplated, the Corporation shall give the Lead Investor, its underwriters, and their respective counsel, auditors and other representatives, the opportunity to participate in the preparation of such documents and each amendment thereof or supplement thereto, and shall insert therein such material, furnished to the Corporation in writing, which in the reasonable judgment of the Lead Investor and its counsel should be included. The Corporation shall give the Lead Investor and the underwriters such reasonable and customary access to the books and records of the Corporation and its subsidiaries and such reasonable and customary opportunities to discuss the business of the Corporation with its officers and auditors as shall be necessary in the reasonable opinion of the Lead Investor, such underwriters and their respective counsel. The Corporation shall cooperate with the Lead Investor and its underwriters in the conduct of all reasonable and customary due diligence which the Lead Investor, such underwriters and their respective counsel may reasonably require in order to conduct a reasonable investigation for purposes of establishing a due diligence defence as contemplated by the Securities Laws and in order to enable such underwriters to execute the certificate required to be executed by them for inclusion in each such document.

7.2 Indemnification

- (a) By the Corporation. The Corporation agrees to indemnify, to the extent permitted by law, the Lead Investor and the partners, members, officers and directors of the Lead Investor and its affiliates and each person, if any, who participates as an underwriter in the offering or sale of the Designated Registrable Securities, their respective officers and directors and each person who controls such underwriter (within the meaning of any applicable Canadian Securities Laws or U.S. Securities Laws (in the case of a Registration under that act)) against all losses (excluding loss of revenues or profits), claims, damages, liabilities and expenses arising out of or based upon (i) any information or statement contained in the Prospectus or Registration Statement or any amendment thereto which at the time and in light of the circumstances under which it was made contains a misrepresentation (as defined in the applicable Canadian Securities Laws or U.S. Securities Laws (in the case of a Registration under that act)); (ii) any omission to state in the Prospectus or Registration Statement any fact that was required to be stated in such document or necessary to make any statement in such document not misleading at the time and in light of the circumstances under which it was made; (iii) any order made or inquiry, investigation or proceedings commenced or threatened by any applicable Canadian Securities Authorities, the SEC, any court or other

competent authority based upon any untrue statement or omission or any misrepresentation in the Prospectus or Registration Statement or any amendment thereto or based upon any failure to comply with applicable Securities Laws (other than any failure by the Lead Investor or the underwriters) preventing or restricting the trading in or the sale and distribution of the Designated Registrable Securities pursuant to a Demand Registration; and (iv) non-compliance by the Corporation with any of the Canadian Securities Laws or the U.S. Securities Laws (in the case of a Registration under that act) in connection with a Demand Registration and the distribution effected thereunder, except insofar as any information or statement referred to in clause (i), (ii) or (iii) of this Section 7.2(a) has been furnished in writing to the Corporation by the Lead Investor pursuant to Section 7.2(b) or the underwriters expressly for use therein or the non-compliance is caused by the Lead Investor's or any underwriter's failure to deliver to a purchaser of Designated Registrable Securities a copy of the Prospectus or Registration Statement or any amendments or supplements thereto after the Corporation has furnished the Lead Investor with a sufficient number of copies of the same.

- (b) By Lead Investor. In connection with any Registration of Designated Registrable Securities, the Lead Investor shall furnish to the Corporation in writing such information with respect to itself and the securities of the Corporation held by the Lead Investor as may be reasonably required by the Corporation to comply with the applicable Canadian Securities Laws or U.S. Securities Laws (in the case of a Registration under that act) in each jurisdiction in which the Registration is to be effected and, to the extent permitted by law, shall indemnify the Corporation, its directors and officers and each Person who controls the Corporation (within the meaning of any Canadian Securities Laws or U.S. Securities Laws (in the case of a Registration under that act)) against any losses (excluding loss of revenues or profits), claims, damages, liabilities and expenses arising out of or based upon any untrue statement of material fact contained in the Prospectus or Registration Statement or any amendment thereof or supplement thereto or any omission of a material fact required to be stated therein or necessary to make any statement therein not misleading, but only to the extent that such untrue statement, or omission is contained in any information so furnished in writing by the Lead Investor pursuant to this Section 7.2(b).
- (c) Procedure. Any Person entitled to indemnification hereunder shall: (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defence of such claim with counsel satisfactory to the indemnified party, acting reasonably. If such defence is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld or delayed). An indemnifying party who is

not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party, without the express written consent of an indemnified party, may settle any claims.

- (d) Survival; Contribution. The indemnification provided for under this Agreement shall survive the expiry of this Agreement and shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive any transfer of securities pursuant thereto. In the event the indemnification is applicable in accordance with its terms but is unavailable in whole or in part for any reason under this Section 7.2, the Corporation and the Lead Investor shall contribute to the aggregate of all losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative benefits received by the Corporation from the agreements being entered into between the Lead Investor and the Corporation contemporaneously herewith and benefits received by the Lead Investor from the distribution of Designated Registrable Securities and the relative fault of the Corporation and the Lead Investor in connection with the event giving rise to liability.

SECTION 8 MISCELLANEOUS

8.1 Governing Law; Specific Performance

This Agreement shall be governed by and construed under the laws of the Province of Alberta and the federal laws applicable therein. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order, without bond. Further, each Party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

8.2 Statements as to Factual Matters

All statements as to factual matters contained in the recitals, any certificate or other instrument delivered pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties under this Agreement.

8.3 Amendments

No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and executed by all Parties hereto.

8.4 Termination

This Agreement shall terminate if at any point the Lead Investor, together with its Affiliates, hold less than 10% of the issued and outstanding Equity Shares of the Corporation on a Fully Diluted Basis. However, Sections 3.2, 3.4, 6.3, 6.4 (in accordance with the terms of such Section), 7.2, 8.1, 8.4, 8.7 and 8.9 shall survive termination of this Agreement and shall remain in full force and effect.

8.5 Successors and Assigns

The rights provided by this Agreement may only be assigned, in whole or in part, by the Lead Investor to a Permitted Assign. Upon such assignment, the Permitted Assign shall be treated as the Lead Investor for all purposes under this Agreement, except that any entitlements to notice and any entitlements to furnished documentation pursuant to this Agreement shall be satisfied by the Corporation through delivery to the transferring Lead Investor on behalf of the Permitted Assign. Except as otherwise expressly provided, the provisions prescribed herein shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the Parties and Permitted Assigns hereto. Notwithstanding the foregoing, prior to the receipt by the Corporation of adequate written notice of the assignment of rights provided hereunder specifying the full name and address of the Permitted Assign and the number of securities of the Corporation having been assigned, the Corporation shall have no obligation to such Permitted Assign pursuant to this Agreement.

8.6 Entire Agreement

This Agreement, the Initial Standby Equity Commitment Agreement, the Second Standby Equity Commitment Agreement, the Termination and Release Agreement, the Initial Subscription Agreement, the Subscription Agreement and the Lock-Up Agreements entered into by the Corporation and the Lead Investor as of the date hereof and the other documents delivered pursuant hereto and thereto constitute the full and entire understanding and agreement between the Parties with regard to the subjects hereof and no Party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

8.7 Severability

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.8 Delays or Omissions

It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any holder, upon any breach, default or noncompliance of any Party under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach,

default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Party's part of any breach, default or non-compliance under the Agreement or any waiver on such Party's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to holders, shall be cumulative and not alternative.

8.9 Notices

Any notice under this Agreement shall be given in writing and either delivered, faxed or mailed by prepaid registered post to the party to receive such notice at the address or facsimile numbers indicated below:

(a) to the Corporation at:

Eguana Technologies Inc.
6143-4th Street SE
Unit 3
Calgary, Alberta, T2H 2H9

Attention: Michael Carten
Facsimile: (403) 205-2509

with a copy to:

Norton Rose Canada LLP
400-3rd Avenue SW
Suite 3700
Calgary, Alberta, T2P 4H2

Attention: Kathleen Cowick
Facsimile: (403) 264-5973

(b) to the Lead Investor at:

DHCT II Luxembourg, S.à.r.l.

Attention: Cedric Stebel
Facsimile: + 00 352 26 27 56 21

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
40th floor
Montréal, Québec H3B 3V2

Attention: John Leopold and Maxime Turcotte
Facsimile: (514) 397-3222 and (514) 397-5421

or such other address or facsimile number as such Party may hereafter designate by notice in writing to the other Party. If a notice is delivered, it shall be effective from the date of delivery; if such notice is faxed (with receipt confirmed), it shall be effective on the Business Day following the date such notice is faxed; if such notice is sent by mail, it shall be effective four (4) Business Days following the date of mailing, excluding all days when normal mail service is interrupted.

8.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Sixth Amended and Restated Investor Rights Agreement as of the date set forth above.

CORPORATION:

LEAD INVESTOR:

EGUANA TECHNOLOGIES INC.

DHCT II LUXEMBOURG, S.À.R.L.

By: (signed) Justin Holland
Name: Justin Holland
Title: Chief Executive Officer

By: (signed) Cedric Stebel
Name: Cedric Stebel
Title: Manager

SCHEDULE A

REGISTRATION PROCEDURES

1.1 Registration Procedures

- (a) Upon receipt of a Request or a notice from the Lead Investor pursuant to Section 6, the Corporation will use its commercially reasonable efforts to effect the qualification for the offer and sale or other disposition or Distribution of Registrable Securities of the Lead Investor, and pursuant thereto the Corporation will as expeditiously as possible:
 - (i) prepare and file with the Canadian Securities Authorities or with the SEC (collectively, the "**Securities Regulators**"), as applicable, a Prospectus or a Registration Statement, as applicable, relating to the applicable Demand Registration or Incidental Registration including all exhibits and financial statements required by the Securities Regulators to be filed therewith and use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective for a period of ninety (90) calendar days or until the Lead Investor has completed the distribution described in the Registration Statement relating thereto, whichever first occurs (provided, however, that before filing a registration statement or any amendments or supplements thereto, or comparable statements under securities or "blue sky" laws of any jurisdiction, or any free writing prospectus related thereto, the Corporation will furnish to counsel for the Lead Investor and the lead underwriter, if any, copies of all such documents proposed to be filed (including all exhibits thereto), which documents will be subject to the reasonable review and reasonable comment of such counsel).
 - (ii) prepare and file with the Securities Regulators such amendments to the Prospectus or the Registration Statement, as may be necessary to complete the Distribution of all such Registrable Securities and as required under any applicable provisions of Securities Laws;
 - (iii) register the Registrable Securities covered by such Registration Statement filed with the SEC under the securities or "blue sky" laws of such jurisdictions as the sellers of Registrable Securities or, in the case of an underwritten public offering, the lead underwriter, reasonably requests, but the Corporation is not, for any such purpose, required to qualify generally to transact business as a foreign corporation in any state of the United States where it is not so qualified or to consent to general service of process in any such jurisdiction;
 - (iv) notify the Lead Investor and the managing underwriter(s), if any, and (if requested) confirm such advice in writing, as soon as practicable after notice thereof is received by the Corporation (i) when the Prospectus or

the Registration Statement, as applicable, or any amendment thereto has been filed, and, to furnish such Lead Investor and managing underwriter(s) with copies thereof, (ii) of any request by the Securities Regulators for amendments to the Prospectus or the Registration Statement, as applicable, or for additional information, (iii) of the issuance by the Securities Regulators of any stop order or cease trade order relating to the Prospectus or the Registration Statement, as applicable, or any order preventing or suspending the use of any Prospectus or Registration Statement, as applicable, or the initiation or threatening for any proceedings for such purposes, and (iv) of the receipt by the Corporation of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

- (v) promptly notify the Lead Investor and the managing underwriter(s), if any, (A) at any time the representations and warranties contemplated by any underwriting agreement, securities/sale agreement, or other similar agreement, relating to the offering shall cease to be true and correct in all material respects, and (B) the happening of any event as a result of which the Prospectus or the Registration Statement, as applicable, contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and in the case of the Prospectus, in light of the circumstances in which it was made or, if for any other reason it will be necessary during such time period to amend or supplement the Prospectus or the Registration Statement, as applicable, in order to comply with the applicable Securities Laws and, in either case as promptly as practicable thereafter, prepare and file with the Securities Regulators, and furnish without charge to the Lead Investor and the managing underwriter(s), if any, a supplement or amendment to such Prospectus or Registration Statement, as applicable, which will correct such statement or omission or effect such compliance;
- (vi) make every reasonable effort to obtain the withdrawal of any stop order, cease trade order or other order suspending the use of any Prospectus or Registration Statement, as applicable, or suspending any qualification of the Registrable Securities covered by the Prospectus or the Registration Statement, as applicable;
- (vii) furnish to the Lead Investor and each managing underwriter, without charge, one executed copy and as many conformed copies as they may reasonably request, of the Prospectus or the Registration Statement, as applicable, and any amendment thereto, including financial statements and schedules, all documents incorporated therein by reference, and provide the Lead Investor and their counsel with an opportunity to

review, and provide comments to the Corporation on the Prospectus or the Registration Statement, as applicable;

- (viii) deliver to the Lead Investor and the underwriters, if any, without charge, as many copies of the Prospectus or of the Registration Statement, as applicable, and any amendment or supplement thereto as such Persons may reasonably request (it being understood that the Corporation consents to the use of the Prospectus or of the Registration Statement, as applicable, or any amendment thereto by the Lead Investor and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by the Prospectus or the Registration Statement, as applicable, or any amendment or supplement thereto) and such other documents as the Lead Investor may reasonably request in order to facilitate the disposition of the Registrable Securities by such Person;
- (ix) use its reasonable efforts to qualify, and cooperate with the Lead Investor, the managing underwriter or agent, if any, and their respective counsel in connection with the qualification of such Registrable Securities for offer and sale in Canada or in the United States in compliance with the applicable Securities Laws as any such Person, underwriter or agent reasonably requests in writing;
- (x) in connection with any underwritten offering, enter into customary agreements, including an underwriting agreement on normal market terms and furnish to the underwriters and the Lead Investor, among other things:
 - (i) an opinion of counsel representing the Corporation for the purposes of such registration, addressed to the underwriters and to the Lead Investor, in form and substance as is customarily given by company counsel to the underwriters in an underwritten public offering (including so-called 10b-5 negative assurance); and
 - (ii) a "comfort letter" dated such date from the independent public accountants retained by the Corporation, addressed to the underwriters and to the Lead Investor, in form and substance as is customarily given in an underwritten public offering, provided that the Lead Investor has made such representations and furnished such undertakings as the independent public accountants may reasonably require;
- (xi) as promptly as practicable after filing with the Securities Regulators any document which is incorporated by reference into the Prospectus or the Registration Statement, as applicable, provide copies of such document to counsel for the Lead Investor and to the managing underwriters, if any;

- (xii) use its reasonable efforts to obtain a customary legal opinion addressed to the Lead Investor;
- (xiii) comply with all applicable rules and regulations of the SEC, and make generally available to its security holders, as soon as reasonably practicable after the effective date of the Registration Statement (and in any event within ninety (90) calendar days after the end of such twelve (12) month period described hereafter), an earnings statement (which need not be audited) covering the period of at least twelve (12) consecutive months beginning with the first day of the Corporation's first calendar quarter after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the U.S. Securities Act and Rule 158 thereunder;
- (xiv) deliver promptly to each Lead Investor participating in the offering and each underwriter, its counsel or auditors, if any, copies of all correspondence between the SEC and the Corporation with respect to the Registration Statement;
- (xv) provide a CUSIP number for all Registrable Securities, not later than the effective date of the Registration Statement;
- (xvi) make reasonably available its employees and personnel for participation in "road shows" and other marketing efforts and otherwise provide reasonable assistance to the underwriters (taking into account the needs of the Corporation's businesses and the requirements of the marketing process) in the marketing of Registrable Securities in any underwritten offering;
- (xvii) promptly prior to the filing of any document which is to be incorporated by reference into the Registration Statement (after the initial filing of such Registration Statement), and prior to the filing of any free writing prospectus, provide copies of such document to counsel for the Lead Investor and to each lead underwriter, if any, and make the Corporation's representatives reasonably available for discussion of such document and make such changes in such document concerning the Lead Investor prior to the filing thereof as counsel for the Lead Investor or underwriters may reasonably request;
- (xviii) cooperate with the Lead Investor and the lead underwriter, if any, to facilitate the timely preparation and delivery of certificates not bearing any restrictive legends representing the Registrable Securities to be sold, and cause such Registrable Securities to be issued in such denominations and registered in such names in accordance with the underwriting agreement prior to any sale of Registrable Securities to the underwriters or, if not an underwritten offering, in accordance with the instructions of the sellers of Registrable Securities at least three (3) Business Days prior to any sale of Registrable Securities and instruct any transfer agent and

registrar of Registrable Securities to release any stop transfer orders in respect thereof;

- (xix) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities;
 - (xx) take no direct or indirect action prohibited by Regulation M under the Exchange Act; provided, however, that to the extent that any prohibition is applicable to the Corporation, the Corporation will take such action as is necessary to make any such prohibition inapplicable;
 - (xxi) take all reasonable action to ensure that any free writing prospectus utilized in connection with any registration complies in all material respects with the U.S. Securities Act, is filed in accordance with the U.S. Securities Act to the extent required thereby, is retained in accordance with the U.S. Securities Act to the extent required thereby and, when taken together with the related Prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and
 - (xxii) in connection with any underwritten offering, if at any time the information conveyed to a purchaser at the time of sale includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, promptly file with the SEC such amendments or supplements to such information as may be necessary so that the statements as so amended or supplemented will not, in light of the circumstances, be misleading.
- (b) The Corporation may require the Lead Investor, as to which any Registration is being effected, to furnish to the Corporation such information regarding the Distribution of such securities and such other information relating to such Person and its ownership of Registrable Securities as the Corporation may from time to time reasonably request in writing. The Lead Investor agrees to furnish such information to the Corporation and to cooperate with the Corporation as necessary to enable the Corporation to comply with the provisions of this Agreement. The Lead Investor shall notify the Corporation immediately upon the occurrence of any event as a result of which any of the aforesaid Prospectuses or Registration Statements, as applicable, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they are made.