

## CANADIAN GATOS SILVER, INC. SECURITIES SETTLEMENT

### PLAN OF ALLOCATION

This Plan of Allocation should be read in conjunction with the Settlement Agreements dated December 19, 2023 (the “**Tetra Tech Settlement Agreement**”) and April 2, 2024 (the “**Gatos Settlement Agreement**”, and together with the Tetra Tech Settlement Agreement, the “**Settlement Agreements**” and “**Settlements**”).

### DEFINED TERMS

1. Unless otherwise defined herein, capitalized terms used herein are as defined in the Gatos Settlement Agreement, which definitions apply to and are incorporated herein.

In addition, the following definitions apply to this Plan of Allocation:

- (a) “**Authorized Canadian Claimant**” means a Class Member who submits a valid Claim to the Claims Administrator that is accepted for payment as set out in this Plan of Allocation;
- (b) “**Acquisition Expense**” means the price paid by a Canadian Claimant (including brokerage commissions) to acquire an Eligible Canadian Gatos Share;
- (c) “**Canadian Claimant**” means a Class Member who submits a properly completed Claim to the Claims Administrator on or before the Claims Bar Deadline;
- (d) “**Canadian Net Settlement Fund**” means the aggregate of the “Settlement Amount”, as that term is defined in both the Gatos Settlement Agreement and the Tetra Tech Settlement Agreement, less Class Counsel’s fees,

disbursements, and other Court-approved expenses;

- (e) “**Claims Administrator**” means RicePoint Administration Inc., or other administrator, including its employees, appointed by the Court to administer the Settlements in accordance with this Plan of Allocation;
- (f) “**Claim**” means a completed claim form, including supporting documents, submitted to the Claims Administrator, which constitutes a Canadian Claimant’s claim for compensation from the Canadian Net Settlement Fund;
- (g) “**Claims Bar Deadline**” means 11:59pm Toronto (Eastern) time on Wednesday, October 30, 2024;
- (h) “**Class Member**” means a “Settlement Class Member” as defined in the Gatos Settlement Agreement;
- (i) “**Class Period**” means from and including October 28, 2020 to and including January 25, 2022 at 6:52 p.m. Eastern Time;
- (j) “**Court**” means the Ontario Superior Court of Justice, in Toronto, Ontario, Canada;
- (k) “**Disposition Proceeds**” means the price per Eligible Canadian Gatos Share received by a Canadian Claimant on the disposition of that Eligible Canadian Gatos Share;
- (l) “**Eligible Canadian Gatos Share**” means:
- a Gatos share acquired during the Class Period, on any Canadian exchange (including, without limitation, the Toronto Stock Exchange) (“**Exchange**”) or any Canadian alternative trading system (“**ATS**”); or

- a Gatos share acquired under either of Gatos’s October 2020 or July 2021 Canadian prospectuses which were receipted by Canadian securities regulatory authorities (or deemed to have been);
- (m) “**FIFO**” means “first in, first ot”, whereby for the purpose of determining a Canadian Claimants’ Recognized Loss, securities are deemed to be sold in the same order that they were purchased (e.g., the first Gatos shares purchased by a Claimant are deemed to be the first Gatos shares sold); and
- (n) “**Recognized Loss**” means an Authorized Canadian Claimant’s notional damages as calculated pursuant to the formulae set forth in this Plan of Allocation, which forms the basis upon which each Authorized Canadian Claimant’s *pro rata* share of the Canadian Net Settlement Fund is determined.

## **OBJECTIVE**

2. The objective of this Plan of Allocation is to equitably distribute the Canadian Net Settlement Fund among Authorized Canadian Claimants.

## **CALCULATION OF MONETARY COMPENSATION AND DISTRIBUTION**

3. All figures are in Canadian Dollars unless otherwise denoted.
4. The Canadian Net Settlement Fund will be distributed in accordance with this Plan of Allocation.
5. The Claims Administrator shall apply FIFO to determine the acquisition that corresponds to the disposition of a particular Gatos share, including in the calculation of an Authorized Canadian Claimant’s Recognized Loss. All Gatos share acquisitions and dispositions (including Gatos shares acquired or disposed of over an

exchange or platform in the United States) will be included in the Claim Administrator's determination of the acquisition that corresponds to the disposition of a particular Gatos share. However, only purchases or acquisitions of Eligible Canadian Gatos Shares can generate a Recognized Loss.

6. The Claims Administrator shall first determine a Canadian Claimant's Recognized Loss in accordance with paragraph 9 below. If the Canadian Claimant has a Recognized Loss greater than zero (0), they become an Authorized Canadian Claimant and the Claims Administrator will go on to calculate the Authorized Canadian Claimant's *pro rata* entitlement to compensation from the Canadian Net Settlement Fund. A Canadian Claimant without a Recognized Loss is ineligible for payment from the Canadian Net Settlement Fund.
7. Transfers of Gatos shares between accounts belonging to the same Canadian Claimant will not be taken into account in determining a Canadian Claimant's Recognized Loss.
8. The date of acquisition or disposition shall be the trade date of the transaction, as opposed to the settlement date of the transaction or the payment date.
9. A Canadian Claimant's Recognized Loss will be calculated as follows:
  - (a) There shall be no Recognized Loss for Gatos shares that are not Eligible Canadian Gatos Shares.
  - (b) For Eligible Canadian Gatos Shares disposed of on or before January 25, 2022 at 6:52 p.m. Eastern Time, the Recognized Loss shall be zero.
  - (c) For Eligible Canadian Gatos Shares disposed of in the ten trading days after the end of the Class Period (i.e. disposed of from January 26, 2022 to February 8, 2022, inclusive), the Recognized Loss shall be the difference between the Acquisition Expense and Disposition Proceeds.
  - (d) For Eligible Canadian Gatos Shares disposed of after the tenth trading day after the end of the Class Period (i.e. disposed of on or after February 9, 2022),

the Recognized Loss shall be the lesser of (i) and (ii):

- (i) the difference between the Acquisition Expense and Disposition Proceeds; and
  - (ii) the difference between the Acquisition Expense and \$3.97.<sup>1</sup>
- (e) For Eligible Canadian Gatos Shares not yet disposed of, the Recognized Loss shall be the difference between the Acquisition Expense and \$3.97.
10. In applying the formulae in paragraph 9, acquisitions and dispositions of Eligible Canadian Gatos Shares in United States dollars shall be converted to Canadian dollars using the Bank of Canada USD:CAD daily exchange rate on the date of acquisition or disposition.
  11. Each Authorized Canadian Claimant's actual compensation will be the portion of the Canadian Net Settlement Fund equivalent to the ratio of his, her or its Recognized Loss to the total Recognized Loss of all Authorized Canadian Claimants, multiplied by the Canadian Net Settlement Fund, as calculated by the Claims Administrator.
  12. The Claims Administrator shall not make payments to Authorized Canadian Claimants whose *pro rata* entitlement under this Plan of Allocation is less than \$10.00. Such amounts shall instead be allocated *pro rata* to other Authorized Canadian Claimants.
  13. Compensation shall be paid to Authorized Canadian Claimants in Canadian currency.
  14. If, one hundred eighty (180) days from the date on which the Claims Administrator distributes the Canadian Net Settlement Fund to Authorized Canadian Claimants, the Escrow Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Claims Administrator shall, if feasible, reallocate such balance among the Authorized Canadian Claimants in an equitable and economic

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<sup>1</sup> The volume weighted average price of Gatos's common shares on the Toronto Stock Exchange in the 10 trading days following the alleged public correction.

fashion. In the event any such remaining balance is less than may practically be distributed to Authorized Canadian Claimants in the opinion of Class Counsel and the Claims Administrator, such balance shall be allocated *cy près* to one or more recipients to be approved by the Court.

### **IRREGULAR CLAIMS**

15. The claims process is intended to be expeditious, cost effective and “user friendly” to minimize the burden on Canadian Claimants. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume Canadian Claimants to be acting honestly and in good faith. The Claims Administrator shall use email for correspondence with Canadian Claimants to the maximum extent possible.
16. The Claims Administrator shall ensure that only Eligible Canadian Gatos Shares are eligible for compensation under this Plan of Allocation. In making this determination with respect to shares acquired on an Exchange or an ATS, the Exchange or ATS code in the transaction records provided by the Canadian Claimant will be determinative. If there is no Exchange or ATS code in the transaction records provided, the Claims Administrator will evaluate the Claim holistically and determine whether a share is an Eligible Canadian Gatos Share in their discretion. The Claims Administrator may, in its discretion, seek additional information from a Canadian Claimant where necessary to make the determination.
17. For clarity, a person may be both a Class Member and a member of the settlement class in the action styled *Bilinsky v. Gatos Silver, Inc. et. al.*, commenced on February 22, 2022, in the United States District Court for the District of Colorado, but

only Eligible Canadian Gatos Shares will be eligible for compensation from the Canadian Net Settlement Fund.

18. Where a Claim contains minor omissions or errors, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omissions is readily available to the Claims Administrator.
19. In order to remedy any deficiency in the completion of a Claim, the Claims Administrator shall request in writing that additional information be submitted by a Class Member who submits a Claim. Such Class Members shall have until the later of sixty (60) days from the date of the request from the Claims Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement Agreements, subject to any order of the Court to the contrary, but will in all other respects be subject to and bound by the provisions of the Settlement Agreements and the releases contained therein.
20. The claims process is intended to prevent fraud and abuse. If, after reviewing any Claim, the Administrator believes that the Claim contains unintentional errors which would materially exaggerate the Recognized Loss of the Canadian Claimant, then the Claims Administrator may disallow the Claim in its entirety or make such adjustments to determine an appropriate Recognized Loss for the Canadian Claimant. If the Claims Administrator believes that the Claim is fraudulent or contains intentional errors which would materially exaggerate the Recognized Loss of the Canadian Claimant, then the Claims Administrator shall disallow the Claim in its entirety.

21. Where the Claims Administrator disallows a Claim in its entirety, they shall send to the Canadian Claimant, at the email or postal address provided by the Canadian Claimant or the Canadian Claimant's last known email or postal address, a notice advising that the Claim has been disallowed and that the Canadian Claimant may request the Claims Administrator to reconsider its decision. For greater certainty, a Canadian Claimant is not entitled to a notice or a review where their Claim is allowed but the Canadian Claimant disputes the amount of his, her or its Recognized Loss or his, her or its individual compensation.
22. Any request for reconsideration must be received by the Claims Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Canadian Claimant shall be deemed to have accepted the Claim Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
23. Where a Canadian Claimant files a request for reconsideration with the Claims Administrator, the Claims Administrator shall advise Class Counsel of the request and make best efforts to conduct an administrative review of the Canadian Claimant's request within thirty (30) days.
24. Following its determination in an administrative review, the Claims Administrator shall make best efforts to advise the Canadian Claimant of its determination ("**Reconsideration Decision Notice**") within thirty (30) days. In the event the Claims Administrator reverses a disallowance, the Claims Administrator shall send the Canadian Claimant, at the email or postal address provided by the Canadian Claimant or the Canadian Claimant's last known email or postal address, a notice



specifying the revision to the Claims Administrator's disallowance.

25. The Claims Administrator's decision on a request for reconsideration will be binding upon the Canadian Claimant, subject to the Canadian Claimant's right to appeal, as outlined in paragraphs 26 to 32.
26. Where, following the determination of a request for reconsideration, the Claims Administrator continues to disallow a Canadian Claimant's Claim in its entirety, the Canadian Claimant may appeal the disallowance. Any such appeal must be electronically submitted within thirty (30) days of the date of the Reconsideration Decision Notice.
27. There shall be no right of appeal:
  - (a) where a Claim is allowed but the Canadian Claimant disputes the amount of his, her or its Recognized Loss or his, her or its individual compensation;
  - (b) in respect of claims filed after the Claims Bar Deadline; and
  - (c) in respect of Claims entitled to compensation of \$50 or less pursuant to this Plan of Allocation.
28. Appeals will be determined by a bilingual arbitrator appointed by the Court. The arbitrator shall apply the rules provided herein to any appeals.
29. Appeals shall be heard as expeditiously as possible, and on the basis of written submissions of the Canadian Claimant supported by any documentation provided to the Claims Administrator and any other material provided by the Canadian Claimant in support of the appeal. Notwithstanding the foregoing, the arbitrator, in his or her sole discretion, may request oral submissions to be made via

teleconference or establish additional procedures to be followed during the appeal in cases where he or she determines that is warranted.

30. The arbitrator, in his or her sole discretion, may mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, continue to arbitrate the appeal.
31. The costs of the arbitrator and the Claims Administrator for a successful appeal will be paid from the Canadian Net Settlement Fund. For greater clarity, the Canadian Claimant shall have no entitlement to be repaid their costs (including any legal fees or disbursements) from a successful appeal. The costs of the arbitrator and the Claims Administrator for an unsuccessful appeal will be paid by the Canadian Claimant, except that the costs of the Claims Administrator may, at its sole discretion, be waived.
32. The arbitrator's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **ADDITIONAL RULES**

33. No action shall lie against Class Counsel (as defined in the Settlement Agreements) or the Claims Administrator for any decision made in the administration of the Settlement Agreements and the Plan of Allocation without an order from the Court authorizing such an action.
34. By agreement between the Claims Administrator and Class Counsel, any deadline contained in this Plan of Allocation may be extended if, in their opinions, doing so will not adversely impact the efficient administration and it is in the interests of the Class to do so.