

**TO THE SECRETARY-GENERAL OF THE  
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**IN THE MATTER OF:**

**INFINITO GOLD LTD.**

**Claimant**

**– and –**

**REPUBLIC OF COSTA RICA**

**Respondent**

**REQUEST FOR ARBITRATION**

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**TORYS LLP**  
Suite 3000  
P.O. Box 270, TD Centre  
Toronto, Ontario  
M5K 1N2 Canada

John Terry  
Myriam M. Seers  
Stéphanie Lafrance

Tel: 416.865.8245  
Fax: 416.865.7380

Lawyers for the Claimant,  
Infinito Gold Ltd.

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## **I. REQUEST FOR ARBITRATION**

1. The Claimant, Infinito Gold Ltd. (“Infinito”), requests the registration of this Request for Arbitration by the Secretary General of the International Centre for Settlement of Investment Disputes (“ICSID”). This request is made pursuant to Article 36 of the *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States* (the “*ICSID Convention*”).

2. Infinito, a Canadian corporation, submits this Request for Arbitration regarding loss and damage incurred by it and by its Costa Rican investment, Industrias Infinito S.A. (“Industrias Infinito”) in respect of the Government of the Republic of Costa Rica’s (“Costa Rica”) treatment of Industrias Infinito, the Crucitas mining concession and other mining rights held by Industrias Infinito and the funds that Infinito has invested in and loaned to Industrias Infinito. The Request for Arbitration is made pursuant to Article XII of the *Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments* (the “*Bilateral Investment Treaty*”).<sup>1</sup> Infinito claims that Costa Rica has violated obligations it owes to Infinito and Industrias Infinito under the *Bilateral Investment Treaty* with respect to the Crucitas project, a gold mining project in Costa Rica.

## **II. FACTS GIVING RISE TO INFINITO’S CLAIM**

### **A. Overview**

3. This dispute concerns the development of a gold mine at Crucitas de Cutris in the economically depressed area of Cutris de San Carlos, in northern Costa Rica, that currently primarily hosts farming, cattle grazing and plantation forestry.

4. Between 1993 and 2010, the Government of Costa Rica granted to Industrias Infinito all the necessary permits and approvals to allow the project to proceed to the construction and exploitation of a gold mine. These included an exploration permit giving Industrias Infinito the exclusive right to conduct exploration activities in the project area, an exploitation concession giving Industrias Infinito the exclusive right to extract, process and sell minerals from the project area, an executive decree from Costa Rica’s President declaring the project to be in the public

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<sup>1</sup> **Exhibit C-1**, *Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments*

interest and of national convenience, and a 2010 decision from the Constitutional Chamber of the Supreme Court of Costa Rica (the “Supreme Court (Sala IV)” ) that the exploitation concession and other project approvals were constitutional and lawful.

5. Relying on the rights it acquired under these permits and approvals and on the Government of Costa Rica’s repeated assurances that the project could proceed, Infinito and Industrias Infinito spent approximately USD \$93.9 million since 1993 developing and building a gold mine at Crucitas. Infinito and Industrias Infinito have incurred these costs to, among other things, prove the existence of a resource of 1.24 million ounces of gold at Crucitas,<sup>2</sup> establish the feasibility of developing a gold mine, conduct exhaustive environmental impact assessments, build infrastructure necessary for the mining operation (including improvements to local roads, bridges and electricity transmission infrastructure), buy and take delivery of necessary equipment, hire 259 employees, and supply skills training for many local community members.

6. In February 2011, following the election of a new administration, the Costa Rican government implemented a complete ban on open-pit mining. This ban echoed a moratorium on open-pit gold mining imposed in 2002 under a previous administration, which was later lifted in 2008. Neither ban applied to pre-existing projects in which rights had already been acquired, such as the Crucitas project.

7. Despite this, in November 2011, the Administrative Chamber of the Supreme Court of Costa Rica (the “Supreme Court (Sala I)” ), upholding a decision of the Contentious Administrative Tribunal, cancelled Industrias Infinito’s exploitation concession and other project approvals, primarily on the basis that the 2002 moratorium on open-pit gold mining applied to the Crucitas project.

8. The Supreme Court (Sala I)’s decision came as a surprise to Infinito. It conflicted with three earlier decisions of the Supreme Court (Sala IV) (the Constitutional Chamber of the same court). One exhaustive, 340-page decision, rendered the previous year, found that the resolutions allowing the project to proceed were constitutional and lawful. Another, issued in 2002, found

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<sup>2</sup> Industrias Infinito’s most recent resource estimate calculated the inferred resource at Crucitas to be 1.24 million ounces of gold at a cutoff grade of 0.5g Au/tonne. From this resource, Infinito predicted recovery of 939,000 ounces of gold.

that the 2002 ban on open-pit gold mining did not apply to the Crucitas project because Industrias Infinito had acquired rights in the project which could not be revoked retroactively. A third decision, issued in 2004, found that the environmental approvals process for the project could proceed.

9. As a result of the Supreme Court (Sala I)'s decision, Industrias Infinito found itself in a situation of legal insecurity. On the one hand, Costa Rica's highest court had ruled that the project approvals were valid and that the project could proceed. On the other hand, a different chamber of *the same court* ruled the opposite and cancelled a number of the project approvals.

10. Industrias Infinito also brought an action before the Supreme Court (Sala IV) for a declaration that the Contentious Administrative Tribunal's decision was unconstitutional because it conflicted with the Sala IV's decisions, contrary to the principles of *res judicata* and *erga omnes* (or supremacy of the Sala IV's decisions) that the Supreme Court (Sala I) was bound to follow. The Supreme Court (Sala IV) declared that the action was inadmissible and declined to hear the action.

11. In January 2012, Costa Rica's Minister of Environment and Energy gave effect to the cancellation of Industrias Infinito's exploitation concession and declared the Crucitas area to be free of all acquired mining rights.

12. Because of the new ban on open-pit mining, Industrias Infinito cannot apply for any new exploration permit or exploitation concession over the project area. By the combination of these measures, Infinito has been deprived of substantially the entire value of its USD \$93.9 million investment and of the opportunity to develop, build and operate a gold mine at Crucitas.

13. Through these and other measures set out in more detail below, Costa Rica has:

- (i) expropriated or subjected Infinito's investments to measures having an effect equivalent to expropriation, for no justifiable public purpose, without due process of law, in a discriminatory manner and without compensation, contrary to Article VIII of the *Bilateral Investment Treaty*;

- (ii) treated Infinito's investments unfairly and inequitably, contrary to the principles of international law and contrary to Article II(2)(a) of the *Bilateral Investment Treaty*;
- (iii) failed to provide Infinito's investments with full protection and security, contrary to Article II(2)(b) of the *Bilateral Investment Treaty*;
- (iv) treated Infinito's investments in a manner less favourable than the treatment granted to Costa Rican nationals and to those of third party states, contrary to Article IV of the *Bilateral Investment Treaty*, which requires, among other things, that Costa Rica (1) comply with obligations it assumed regarding Infinito's investments, (2) not take unreasonable, arbitrary or discriminatory measures in relation to Infinito's investments, (3) adopt legislation guaranteeing fair and equitable treatment of Infinito's investments, and (4) take necessary measures to ensure that Infinito's investments are treated fairly and equitably both in law and in fact, all of which Costa Rica failed to do; and
- (v) created unfavourable conditions for Infinito's investments, contrary to Article II(1) of the *Bilateral Investment Treaty*.

14. Costa Rica has not responded to Infinito's invitations to engage in discussions to settle this dispute amicably. Infinito therefore brings this claim on its own behalf and on behalf of its Costa Rican investment, Industrias Infinito, for compensation pursuant to the *Bilateral Investment Treaty*.

**B. 1993-2010: Industrias Infinito Obtains All Required Approvals and Spends \$93.9 Million Developing the Project in Good Faith**

***Infinito and Industrias Infinito***

15. Infinito is a corporation incorporated under the laws of British Columbia, Canada. Infinito is engaged in mineral exploration and extraction, primarily in Central and Latin America.

16. Infinito owns 100% of the shares of Crucitas (Barbados) Limited, a corporation incorporated under the laws of Barbados, which in turn owns 100% of the shares of Industrias Infinito, a company incorporated under the laws of Costa Rica.

17. Industrias Infinito's only business is the development of a gold mine at Crucitas de Cutris. It has been operating since 1992.<sup>3</sup> It has its main office in San Jose, Costa Rica. Until 2011, it also had an office close to the project area in Ciudad Quesada, in the Province of Alajuela.

### ***The Cutris Area***

18. The Crucitas project is located in Crucitas de Cutris District, in San Carlos Canton, in the Province of Alajuela, in northern Costa Rica near the border between Costa Rica and Nicaragua.

19. The Cutris area is sparsely populated and economically depressed. Its economy currently primarily depends on subsistence farming, cattle grazing, plantation forestry and logging. Many of the area's homes lack running water and electricity.

20. After the Crucitas project was cancelled, many families who had settled in the area in the hope of obtaining employment left. Without the project, opportunities for business development and employment are very limited. Further, because of the area's sparse population, poverty and proximity to the Nicaraguan border, the area has increasingly been host to narcotics trafficking in recent years.

21. Historically, the Crucitas area has been used for agriculture and forestry. The primary growth forest that formerly covered the area was largely razed by loggers in the 1960s and 1970s. Today, the land consists primarily of open fields and secondary growth trees, including commercial plantations of teak and *molina* trees.

### ***Industrias Infinito Obtains an Exploration Permit for the Crucitas Project***

22. The existence of a gold deposit at Crucitas was first discovered by a Canadian geologist in the 1980s. Between 1991 and 1993, through his exploration company, the geologist requested

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<sup>3</sup> Under its current name and its former name, Placer Dome de Costa Rica S.A.

and obtained from the Costa Rican Directorate of Geology and Mines an exploration permit granting the company the exclusive right to conduct exploration work in a defined area (the “Crucitas project area”) for three years.

23. The exploration permit was transferred to Industrias Infinito<sup>4</sup> in January 1996, and its term extended to September 18, 1999.

24. At the time, the Costa Rican government strongly encouraged investment in mining exploration as a means of bringing economic development to the economically depressed north of the country, and confirmed repeatedly that mining was a major component of Costa Rica’s economic development. Indeed, the Director of Geology and Mines is reported to have stated in April 1996 that mining could guarantee social and economic benefits to citizens in the north. As of April 1996, the government reportedly had granted 141 exploration permits covering areas in the north.

25. In accordance with the *Mining Code*, the exploration permit gave Industrias Infinito:

- (i) the exclusive right to conduct exploration work and to search for minerals in the Crucitas project area; and
- (ii) the exclusive right to obtain an exploitation concession for the Crucitas project area once Industrias Infinito had proven the existence of one or more exploitable mineral substance deposits located within the Crucitas project area.

### ***Industrias Infinito Spends \$34 million on Exploration Work***

26. Industrias Infinito relied on the Costa Rican government’s representations with respect to its commitment to mining in making a major investment in the Crucitas project. It spent more than USD \$34 million during the exploration phase of the project alone.

27. During the exploration phase, Industrias Infinito conducted an extensive program of soil sampling, drilling, assaying and geological mapping and completed numerous studies, including

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<sup>4</sup> Then known as Placer Dome de Costa Rica S.A.

geological, hydrogeological, engineering, seismic risk, geo-technical, soil, land use, landscape characterization, social-economic characterization, social profile, public opinion and biological studies. In addition to this extensive exploration program, Industrias Infinito purchased valuable equipment, built the exploration camp, constructed buildings and other infrastructure on the site of the mine, purchased land and repaired village roads.

28. At the conclusion of the exploration phase of the project, Industrias Infinito prepared a comprehensive feasibility study in accordance with the technical requirements of the *Mining Code* and applicable regulations. The feasibility study, as updated by later studies, confirmed that:

- (i) the Crucitas deposit contained an indicated resource of 1.24 million ounces of gold at a cutoff grade of 0.5g Au/tonne, an inferred resource of 1.21 million ounces of gold at a cutoff grade of 0.5g Au/tonne, and mineable reserves of 1.01 million ounces of gold;
- (ii) mining operations could proceed by the open-pit method with conventional shovel and truck operations;
- (iii) mineral processing could occur on site, with construction of a plant capable of processing 5,000 tonnes of hard rock ore per day;
- (iv) the construction of all necessary infrastructure was feasible, including upgrades to existing roads and bridges, construction of service buildings and installation of a new 69 kilovolt electricity transmission line; and
- (v) during construction, the labour force on site was expected to peak at 270 workers.

29. Industrias Infinito's initial feasibility study proved the existence of a substantial gold deposit at Crucitas, giving Industrias Infinito the exclusive right, in accordance with the *Mining Code*, to obtain an exploitation concession allowing it to extract, process and sell the minerals from the deposit, and rights to the minerals themselves.

30. In December 1999, Industrias Infinito submitted a feasibility study and a request for an exploitation concession to develop a surface gold mine at Crucitas for the superficial saprolite material. In May 2001, the Directorate of Geology and Mines approved the feasibility study, including the socio-economic and environmental impacts of the project.

***Industrias Infinito Obtains an Exploitation Concession***

31. In December 2001, the President of Costa Rica, Miguel Angel Rodriguez Echeverría, and Minister of Environment and Energy, Elizabeth Odio Benito, granted an exploitation concession to Industrias Infinito with respect to the Crucitas project for a period of ten years.

32. The exploitation concession granted Industrias Infinito the exclusive right to:

- (i) extract gold, silver, copper and associated minerals from the Crucitas project area;
- (ii) transform and process the minerals; and
- (iii) dispose of the minerals for commercial and industrial purposes.

33. In the exploitation concession, President Rodriguez and Minister Odio concluded that:

- (i) “the reserves of the deposit have been sufficiently proven, demonstrating a reliable gold deposit (translation)”;
- (ii) it was “important to point out that this project could expand knowledge of mineral resources in the area (translation)”;
- (iii) “proposals for extracting and processing the gold, as well as the infrastructure to be installed in the area (processing plant, tailings pond, material storage yards, tailings yard, water treatment plants, etc.) have been properly supported with the corresponding technical-environmental studies (translation)”;
- (iv) the technical-geological study, resource calculation and exploitation plan were approved.

34. The granting of the exploitation concession to Industrias Infinito was published in Costa Rica's Official Gazette, inviting any objections to be submitted. None were received.

***Industrias Infinito Completes a Comprehensive Environmental Impact Assessment***

35. In accordance with the provisions of the *Mining Code* then in effect, the exploitation concession provided that exploitation activities could not begin until an Environmental Impact Assessment ("EIA") for the project was approved by the National Technical Environmental Secretariat ("SETENA"). The exploitation concession specified that the EIA had to be submitted within six months of the issuance of the exploitation concession.

36. From 1995 to 2002, Industrias Infinito completed a detailed EIA in collaboration with a multi-national consulting firm and several highly qualified Costa Rican environmental consultants. The EIA contained a detailed Environmental Management Plan, which set out proactive management plans for forestry, wildlife habitat, wastewater treatment, drainage prevention and control, surface water management, erosion control, environmental monitoring, reclamation/closure and social development programs. The EIA did not identify any negative environmental impacts that could not be mitigated.

37. In annexes to the EIA, Industrias Infinito committed to help develop local community infrastructure and sustainable economic activity in the area.

38. In compliance with the *Mining Code* and the terms of its exploitation concession, Industrias Infinito submitted the EIA to SETENA in March 2002. Under the *General Public Administration Law*, SETENA had 60 days to render a decision with respect to the EIA.

***New Pacheco Government Decrees a Moratorium on Open-Pit Gold Mining But Confirms that the Crucitas Project Will Not Be Affected***

39. The coming into power of the new, anti-mining administration of President Abel Pacheco in May 2002 had the effect of stalling the Crucitas project somewhat. However, even under the Pacheco administration, Industrias Infinito continued to receive assurances from Costa Rican authorities that its rights would be respected and that its project could proceed.

40. President Pacheco campaigned on an anti-mining platform. Contrary to the policy of previous administrations, during the campaign, Dr. Pacheco expressly rejected mining and oil exploration as a major component of Costa Rica's economic development. He targeted the Crucitas project specifically, and stated publicly that the project could proceed only "over my dead body (translation)". Following the election, President Pacheco and the new Minister of Environment and Energy, Carlos Manuel Rodríguez, made a number of public statements that threatened the future of the project, including that they were considering the cancellation of the concession and were ready to enter into conversations with the company for the payment of an indemnity.

41. Once elected, one of President Pacheco's first orders of business was to issue an executive decree declaring a moratorium on open-pit gold mining in Costa Rica for an indefinite period. The moratorium did not apply to the Crucitas project, because it provided for the preservation of existing mining rights, consistent with the protection against retroactive interference with acquired rights enshrined in Article 34 of Costa Rica's Political Constitution. In addition, although public statements by President Pacheco and Minister Rodríguez suggested that the project might be at risk, in private meetings Minister Rodríguez assured Industrias Infinito that its rights would be respected.

***Supreme Court (Sala IV) Confirms that the Moratorium Does Not Apply to the Crucitas Project***

42. Because of the uncertainty created by the public statements suggesting that the two existing gold mining projects in Costa Rica – the Crucitas and Bellavista projects – might be at risk, the Bellavista project's owner brought an *amparo* proceeding before the Supreme Court (Sala IV) arguing that the moratorium breached its and Industrias Infinito's rights.

43. Rejecting the *amparo*, the Court declared that the moratorium did not interfere with the acquired rights of the Bellavista project's owner or Industrias Infinito, because the decree expressly contemplated that acquired rights would be respected.

44. For Industrias Infinito, this decision eliminated the uncertainty surrounding the moratorium and confirmed that its rights to the Crucitas project would be respected despite the then-current government's anti-mining platform.

***SETENA First Stalls the EIA, then Proceeds with the Approval Process***

45. Meanwhile, the EIA had been awaiting approval by SETENA since March 2002. By January 2003, Industrias Infinito had still not received any indication from SETENA that the approval process for the EIA was underway, even though SETENA was required by law to have issued a decision by June 2002.

46. After making several inquiries of SETENA that went unanswered, Industrias Infinito filed a complaint against SETENA with the Supreme Court (Sala IV) claiming that SETENA's extensive delay and failure to respond to inquiries violated Industrias Infinito's right to due process. The next day, SETENA rejected the EIA on the basis that it did not meet certain objectives. SETENA based this conclusion on reports that it refused to disclose. The Sala IV accepted Industrias Infinito's complaint, and ordered SETENA to disclose the reports on which its decision to reject the EIA was based. Despite the court order, SETENA refused to disclose the basis for its decision to reject the EIA.

47. In April 2003, Infinito<sup>5</sup> gave notice to the government of Costa Rica that it intended to invoke the *Bilateral Investment Treaty* in relation to SETENA's unjustified refusal to proceed with the EIA approval process. Shortly after, the Minister of Environment and Energy ordered SETENA to restart the EIA approval process with a new group of professionals, and annulled the SETENA resolution that had rejected it.

48. The EIA approval process then resumed. While the process was ongoing, President Pacheco was quoted in the *Al Día* newspaper stating that the Crucitas project was "in compliance with law and may proceed (translation)".

49. During the EIA approval process, SETENA officials held consultations and a large public hearing in the project area to answer questions about the project. Over 2000 people attended the public hearing on July 31, 2004, and 214 interventions were recorded. These consultations revealed that support for the project was overwhelming among residents of the area surrounding the project.

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<sup>5</sup> Under its former name, Vannessa Ventures Ltd.

***Supreme Court (Sala IV) Cancels the Exploitation Concession But Allows the EIA Approval Process to Continue***

50. In April 2002, the project's opponents had mounted a legal challenge before the Supreme Court (Sala IV) with respect to the constitutionality of Industrias Infinito's exploitation concession.

51. Throughout that proceeding, the Minister of Environment and Energy (then Minister Odio) defended the legality and constitutionality of the exploitation concession. She confirmed in submissions to the Court that Industrias Infinito had complied with all applicable legal and technical requirements to obtain the exploitation concession.

52. Despite the Minister's submissions, the Supreme Court (Sala IV) in 2004 issued a decision holding that the exploitation concession violated Article 50 of the Political Constitution, which guarantees the right to a healthful and ecologically balanced environment. The Court reached that conclusion on the basis that the exploitation concession was granted without the EIA first being approved, even though the *Mining Code* at the time expressly provided that the EIA approval process was to occur after the exploitation concession was granted.

53. Based on the above reasoning, the Court cancelled the exploitation concession, but "without prejudice to the findings of the Environmental Impact Assessment (translation)". Consistent with its 2002 decision, the Court never suggested that Industrias Infinito's rights to the Crucitas project were in any way affected by the 2002 moratorium on open-pit gold mining, which remained in effect.

54. Following the Supreme Court (Sala IV)'s decision, then Minister of Environment and Energy Rodríguez wrote to the Court confirming that, in accordance with the provisions of the *Mining Code*, the EIA approval process must take place after the exploitation concession is granted and that the exploitation concession had therefore been granted validly in accordance with the requirements of the *Mining Code*.

***SETENA Approves the EIA***

55. As contemplated in the Supreme Court (Sala IV)'s 2004 decision, SETENA proceeded with the EIA approval process. Government officials and Industrias Infinito proceeded on the common understanding that, once the EIA was approved, either the existing exploitation concession would be restored or a new exploitation concession would be granted. There was never any suggestion by government officials during this process that the project could no longer proceed because the 2002 moratorium applied to it.

56. In January 2005, a group of 50 villagers from the Crucitas and other areas protested at SETENA's offices asking that the decision on approval of the EIA not be further delayed. SETENA also received numerous letters urging it to approve the EIA as soon as possible.

57. Throughout the winter and spring of 2005, Industrias Infinito worked extensively and cooperatively with SETENA officials to answer all of their questions with respect to the EIA. For example, in April 2005, Industrias Infinito submitted a document answering in detail 100 questions asked by SETENA officials concerning various aspects of the project.

58. Although Industrias Infinito complied in good faith with all of SETENA's requests and all applicable requirements, SETENA continued to stall in approving the EIA. This prompted Infinito to submit a Request for Arbitration under the ICSID *Additional Facility Rules*, in which Infinito claimed, among other things, that SETENA breached its legitimate expectation that the EIA would be processed and approved within a reasonable period of time. The Request was later withdrawn.

59. Shortly after, satisfied that the project complied with all environmental requirements, SETENA approved the EIA. At SETENA's request, in September 2005, Industrias Infinito submitted a 50-page notarized affidavit setting out extensive environmental commitments relating to the project.

60. In December 2005, SETENA declared the Crucitas project environmentally viable. As a result of these approvals by SETENA, Industrias Infinito was entitled to recover its exploitation concession.

***New Arias Government Supports the Project***

61. The arrival in power of the administration of President Oscar Arias Sánchez in May 2006 ushered in a new era for the project, and an end to the four years of slow progress that had plagued the project under the Pacheco administration. In stark contrast to the position taken by his predecessor, President Arias and new Minister of Environment and Energy Roberto Dobles Morales supported Industrias Infinito's efforts to obtain the final approvals for the project and to proceed with building and operating the mine.

62. Industrias Infinito arranged for the preparation of a revised EIA which reflected changes to the project, including a decrease in extraction area but an increase in extraction depth. SETENA approved the EIA with modifications in February 2008. This modification allowed Industrias Infinito to recover the underlying hard rock as well as the soft superficial saprolite or weathered rock material that had already received environmental approval.

63. Consistent with his support of mining as a key priority for Costa Rica's economic development and with his government's National Development Plan, in March 2008 President Arias repealed the moratorium on open-pit gold mining put in place by President Pacheco and issued a decree safeguarding the mining environment in Costa Rica. The decree provided that:

“It is in the interest of the socio-economic development of the country to reactivate open pit mining within the national territory, in order to open up new spaces and improve the employment, social and economic activities of the regions; for which all the existing technical regulations and laws in force must be abided by in order to guarantee the sustainable use of the mining resource. (translation).”

***President and Minister Restore the Exploitation Concession and Declare the Project in the Public Interest and of National Convenience***

64. In April 2008, President Arias and Minister Dobles restored Industrias Infinito's exploitation concession. This followed SETENA's approval of the revised EIA, in accordance with the Supreme Court (Sala IV)'s 2004 decision cancelling the exploitation concession but allowing the EIA approval process to proceed.

65. The President and Minister noted that, in accordance with the Supreme Court (Sala IV)'s decision, the concession could be restored once the EIA was approved. In restoring the concession (rather than granting a new one), the President and Minister applied the principle of conservation of administrative acts under Article 164 of the *General Law of Public Administration*.

66. In furtherance of their government's policy that mining was a key priority for Costa Rica's economic development, President Arias and Minister Dobles issued an executive decree, in October 2008, which declared that the Crucitas project was in the public interest and of national convenience.

67. The executive decree expressly recognized many of the social, economic and environmental benefits of the Crucitas project for the local community and the local and national economy. It stated:

The Crucitas project will bring a number of economic benefits to the community of San Carlos, and to the national government. These benefits include the following: i) The mine will be in operation for close to 11 years (including construction, operation, and closure). This means that during that time, there will be development in the communities surrounding Crucitas, and a need for labor; ii) The initial investment for the construction of the Crucitas mine is close to US\$ 65 million. It is calculated that part of this amount will be used to pay professional services, pay contractors, purchase materials and machinery, many of which will come from the San Carlos area; iii) it is estimated that 253 direct jobs will be created. In the mining industry, the rule of thumb is that for each direct job, there are 5 indirect jobs created; and therefore there would be a total of 1,265 indirect employees; iv) Among the social commitments of the project is the agreement that at least 75% of the employees will come from the greater Crucitas area; v) Payroll: the annual employee payroll is estimated to be US\$ 4,132,859; vi) Local taxes. The Mining Code establishes that mining companies must pay 2% of their gross profits to the community; therefore the municipality of San Carlos and the communities within the area of influence of Crucitas will receive approximately US\$ 1,441,158 per year for eight years (for a total of US\$ 11,529,263); vii) A trust fund is constituted and managed for carrying out social welfare and community projects, and to fund the work of the Crucitas Project Oversight Commission,

which will receive an annual sum of US\$ 364,063, and viii) The Crucitas Project will pay taxes to the central government, which are estimated at an annual income tax payment of US\$ 8,790,289, totaling US\$ 70,322,309 over the life of the mine (translation).

68. Industrias Infinito then obtained, in October 2008, the last permit it needed in order to proceed with building the project – a land use change permit to change the land zoning from agricultural to mining use.

69. With the exploitation concession and all the required approvals in place, Industrias Infinito had the right to extract, process and commercialize the minerals in the Crucitas project area.

***Industrias Infinito Spends \$44.1 Million on Construction and Investments in the Community***

70. Relying on the approval of the revised EIA and on the Arias government's repeated confirmations that the project was in the national interest and could proceed, Industrias Infinito immediately began to develop the project. It spent USD \$44.1 million on construction and on equipment.

71. Construction of the project was well underway by October 2008. Industrias Infinito constructed or began constructing, among other buildings, a processing plant, four dormitories, administrative offices, a store, a workshop, a dining hall, a recreation hall and a storage facility. It commenced site earthworks and construction of foundations for the mills and processing plant and completed access roads and bridges, an internal electrical distribution system and a waste water treatment plant. It purchased and took delivery of a substantial amount of equipment for the processing plant. The two large mills for grinding the ore for processing were on site and the large quantity of steel for all of the many tanks involved in leaching the gold from the rock, absorbing the gold onto activated carbon and for destroying the cyanide at the end of the process was in Costa Rica ready for fabrication.

72. In addition to the construction work undertaken by Industrias Infinito, Industrias Infinito actively led and financed an extensive corporate social responsibility program in the local communities located near the project area. This included educational and training programs,

road improvements, electrification of small villages, school improvements and many other projects intended to enhance sustainability and social progress.

***Supreme Court (Sala IV) Declares the Project to Be Constitutional and Lawful***

73. Shortly after the President and Minister declared the project to be in the public interest and of national convenience, and after construction of the project was well underway, the project's opponents once again mounted a legal battle with a view to thwart the development of the project. This time, the project's opponents brought a constitutional challenge before the Supreme Court (Sala IV) against SETENA's resolution approving the EIA, the President and Minister's resolution restoring the exploitation concession, the executive decree declaring the Crucitas project to be in the public interest and of national convenience, and other approvals and permits granted to Industrias Infinito for the project.

74. In July 2010, the Supreme Court (Sala IV) issued a 340-page decision that concluded that the resolutions, decree and other approvals complied with the Constitution and applicable laws.<sup>6</sup> It did so after receiving 6,394 pages of evidence, engaging in 18 months of study with the assistance of two full-time law clerks, conducting a visit to the Crucitas project area and hearing three days of legal submissions. This detailed decision confirmed the Court's summary decision rendered in April 2010. The Supreme Court (Sala IV)'s decision considered all aspects of the project in detail, including its compliance with all applicable constitutional principles, laws and technical requirements. The Court also referred to its earlier 2002 decision, which had found that the 2002 moratorium on open-pit gold mining did not apply to the Crucitas project because Industrias Infinito had acquired rights to the project, and its 2004 decision which had annulled the exploitation concession but allowed the EIA approval process to proceed.

75. As a result of the Supreme Court (Sala IV)'s decision, Industrias Infinito legitimately expected that it could finally proceed to complete its project. It had obtained all required permits and approvals, including a decree from the President and the Minister of Environment and Energy that the project was in the public interest and of national convenience. All permits and

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<sup>6</sup> Except in one limited respect (pre-approval of hydrogeological studies), which had been remedied by the time of the hearing.

approvals had been upheld by the Supreme Court, the highest court in the land, and no further appeals were possible.

***Contentious Administrative Tribunal Annuls Industrias Infinito's Exploitation Concession and Other Approvals***

76. Only four hours after the release of the Supreme Court (Sala IV)'s decision, the Contentious Administrative Tribunal issued an injunction stopping work on the project. In doing so, it revived a 2008 proceeding brought by opponents of the project. Because of the overlap between this proceeding and the proceeding before the Supreme Court (Sala IV), and the fact that the Sala IV is a court of superior jurisdiction to the Contentious Administrative Tribunal, Industrias Infinito had assumed that the proceeding had been rendered moot.

77. During the hearing, Industrias Infinito worked closely with officials from the Ministry of Environment and Energy and SETENA, who were heavily involved in defending the project's approvals.

78. In December 2010, the Tribunal issued a decision that flatly contradicted the decision rendered by the Supreme Court (Sala IV) only six months before and the other decisions respecting the project previously rendered by that Court. The Tribunal cancelled the EIA approvals, the resolution granting the exploitation concession, the decree declaring the Crucitas project in the public interest and of national convenience and other project approvals.

79. In light of the clearly flawed reasoning in the Tribunal's decision, Industrias Infinito and the Costa Rican government expected that the decision would be overturned on appeal before the Supreme Court's Administrative Chamber, the Sala I. Industrias Infinito and the Ministry of Environment and Energy also brought an action before the Supreme Court (Sala IV) for a declaration that the Tribunal's decision was unconstitutional because it was inconsistent with the decisions of the Supreme Court (Sala IV).

**C. 2011-2013: Infinito's Investments are Expropriated by Court and Executive Measures Without Due Process and Payment of Adequate Compensation**

***Supreme Court (Sala I) Annuls Industrias Infinito's Exploitation Concession and Other Approvals***

80. In November 2011, to the surprise of Industrias Infinito and officials from the Ministry of Environment and Energy, the Supreme Court (Sala I) confirmed the annulment of Industrias Infinito's exploitation concession, the EIA approvals, the declaration of public interest and national convenience, and other project approvals. Its ruling was inconsistent with three decisions of another chamber of the same Court, the Supreme Court (Sala IV).

81. One of the Supreme Court (Sala I)'s reasons for finding that the resolutions and decree were unlawful was that the 2002 moratorium on open-pit gold mining applied to the project, even though the moratorium was issued after Industrias Infinito's exploration permit and exploitation concession were granted. The Court found that the President, the Minister of Environment and Energy and SETENA had no power to issue resolutions approving various aspects of the project after 2002, because, in its view, the 2002 moratorium on open-pit gold mining applied on a mandatory basis to all open-pit gold mining projects. Contrary to the decisions of the Supreme Court (Sala IV) rendered in 2002, 2004 and 2010, the Supreme Court (Sala I) found that Industrias Infinito had no acquired rights to the Crucitas project and therefore could not claim the benefit of the transitional provisions in the 2002 moratorium.

82. The Supreme Court (Sala I) made this decision even though: (1) the Supreme Court (Sala IV) had ruled the previous year that the same resolutions and decree were constitutional and lawful; (2) on its face, the 2002 moratorium did not apply to the project because Industrias Infinito had rights acquired before the moratorium was enacted; (3) the Supreme Court (Sala IV) had ruled in 2002 that the 2002 moratorium did not apply to the project; (4) the Supreme Court (Sala IV) had ruled in 2004 that the project could proceed to the EIA approval phase even though the 2002 moratorium remained in effect; (5) the application of the 2002 moratorium to the resolutions was not part of the claim; and (6) the Contentious Administrative Tribunal had not given Industrias Infinito the opportunity to make submissions as to why the 2002 moratorium did not apply to the project. Indeed, the decision was divorced completely from the issues that had been considered at the hearing and from those set out in the claim.

83. The decision was a flagrant violation of the principles of *res judicata* and *erga omnes*, by which the Supreme Court (Sala I) is bound to follow the prior decisions of the Supreme Court (Sala IV). Both the Attorney General of Costa Rica and Industrias Infinito made extensive submissions on these points before the Sala I, which were rejected.

84. Not only did the Supreme Court (Sala I) annul the exploitation concession and other approvals, it further condemned Industrias Infinito and the government of Costa Rica to pay damages to restore the project area to its pre-construction condition. The amount of damages has not yet been determined.

***Supreme Court (Sala IV) Refuses to Resolve the Conflict***

85. On November 11, 2011, Industrias Infinito brought an action to the Supreme Court (Sala IV) for a declaration that the Tribunal's decision was unconstitutional because it conflicted with the Supreme Court (Sala IV)'s earlier decisions.

86. Shortly after that action was filed, the Supreme Court (Sala I) rendered its decision. This gave the Supreme Court (Sala IV) a technical justification to refuse to hear Infinito's action: it ruled that the matter was now no longer the subject of a pending decision, such that the unconstitutionality action was not admissible. Although this technical issue became known in November 2011, the Supreme Court (Sala IV) did not issue its decision until June 2013, and did so only after the matter was taken to the magistrates for a vote seven times and after one of the magistrates was recused for having expressed open and public opposition to the Crucitas project. The Supreme Court (Sala IV) refused to render any substantive decision resolving the conflict that existed between its decision – which confirmed that the resolutions and decree approving the project were constitutional and legal – and the decision of the Supreme Court (Sala I), which held the opposite.

87. The inconsistent Supreme Court decisions rendered with respect to the Crucitas project, and the failure of the Costa Rican justice system to resolve them, created a situation of legal insecurity and a denial of justice that frustrated Industrias Infinito's ability to develop the Crucitas project in accordance with its exploitation concession, exploration permit and other approvals it had been granted.

***Minister of Environment and Energy Extinguishes Industrias Infinito's Rights to the Crucitas Project***

88. Although the executive branch of the Costa Rican government had defended and continued to defend the legality of the project approvals before the Contentious Administrative Tribunal and the Supreme Court (both the Sala I and the Sala IV), the government's attitude toward mining changed again under the administration of President Laura Chinchilla, who came to power in May 2010, and new Minister of Environment and Energy René Castro Salazar.

89. Following the Supreme Court (Sala I)'s decision and faced with conflicting judicial decisions, the executive branch of the government sided against the project. Following the issuance of the Supreme Court (Sala I)'s decision, Minister Castro purported to give effect to the decision by cancelling the exploitation concession in a resolution issued in January 2012. The resolution "release[d] the [Crucitas] area from the Mining Registry (translation)". Effectively, the resolution declared the Crucitas area to be free of all mining rights.

***Industrias Infinito Cannot Obtain New Permits Because the New Government Has Banned Mining Again***

90. Effective February 10, 2011, the Costa Rican Legislative Assembly, with the support and approval of President Chinchilla's administration, amended the *Mining Code* to once again ban open-pit mining. The new ban did not apply to concession rights acquired in good faith and that complied with all applicable requirements before the amendments came into force.

91. The new ban prohibits Industrias Infinito from obtaining a new exploration permit and exploitation concession over the Crucitas project area, contrary to its legitimate expectation that it would be allowed to proceed with the project once it complied with all technical requirements.

**III. BREACHES BY COSTA RICA OF THE BILATERAL INVESTMENT TREATY**

92. Article XII of the *Bilateral Investment Treaty* enables an investor of Canada with an investment in Costa Rica to bring a claim against Costa Rica where Costa Rica has adopted a measure that is in breach of the Treaty and the investor has incurred loss or damage by reason of, or arising out of, that breach.

93. An “investment” is defined under Article I(g) of the Treaty as:

[A]ny kind of asset owned or controlled either directly, or indirectly through an enterprise or natural person of a third State, by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with the latter’s laws and, in particular, though not exclusively, includes:

(i) moveable and immoveable property and any related property rights;

(ii) shares, stocks, bonds and debentures or any other form of participation in an enterprise; [...]

(iv) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources. [...]

Without prejudice to subparagraph (ii) immediately above, a loan to an enterprise where the enterprise is an affiliate of the investor shall be considered an investment.

94. Infinito’s investments in Costa Rica are Industrias Infinito, Industrias Infinito’s exploitation concession and other rights to the Crucitas project, and the funds Infinito has loaned to and invested in Industrias Infinito.

95. By the combined operation of the Supreme Court (Sala I)’s decision cancelling the exploitation concession and other project approvals, the Supreme Court (Sala IV)’s decision refusing to resolve the conflict among its earlier decisions and the Sala I’s decision, Minister Castro’s January 2012 resolution declaring the Crucitas area free of mining rights and the 2011 ban on open-pit mining, Industrias Infinito’s rights to develop and commercialize a gold mine at Crucitas have been extinguished.

96. These and other measures have breached Articles II (1), II (2), IV and VIII of the *Bilateral Investment Treaty*.

### **Costa Rica Has Breached the Prohibition against Expropriation**

97. Article VIII of the *Bilateral Investment Treaty* provides that “[i]nvestments or returns of either Contracting Party shall not be nationalized, expropriated or subjected to measures having

an effect equivalent to nationalization or expropriation [...] except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation.” Costa Rica has, either directly or indirectly, unlawfully expropriated Infinito’s investment – its right, through Industrias Infinito, to develop and exploit a mine at Crucitas – with no due process, in a discriminatory manner, and with no compensation for the losses it and Industrias Infinito suffered as a result of the expropriation.

98. Throughout the two decades that it worked diligently to develop the Crucitas project, Industrias Infinito has complied in good faith with all of its obligations under Costa Rican law. Infinito and Industrias Infinito had a legitimate expectation that Industrias Infinito would be entitled to develop and exploit a mine at Crucitas. Contrary to that legitimate expectation, the Supreme Court (Sala I) cancelled Industrias Infinito’s exploitation concession and other project approvals on the basis that President Pacheco’s 2002 moratorium on open-pit gold mining applies to the Crucitas project. Far from ordering that Industrias Infinito is entitled to compensation for the cancellation of its concession and of its other rights, the Sala I ordered Industrias Infinito to pay damages to restore the project area to its pre-construction state. The Minister of Environment and Mines formally cancelled the concession and declared the Crucitas area to be free of all acquired mining rights, also without compensation. The Supreme Court (Sala IV) refused to resolve the conflict between the Sala I’s decision and the Sala IV’s 2002, 2004 and 2010 decisions which held that the project could proceed despite the 2002 moratorium. As a result of the new ban on open-pit mining, Industrias Infinito cannot apply for any new mining rights over the project area. Together, these measures have deprived Infinito of substantially the entire value of its USD \$93.9 million investment in Industrias Infinito and in the mining rights held by Industrias Infinito. They are an unlawful expropriation of Infinito’s investments.

### **Costa Rica Has Breached Its Obligation To Provide Fair and Equitable Treatment to Infinito’s Investments**

99. Article II(2)(a) requires Costa Rica to accord to Infinito’s investments “fair and equitable treatment in accordance with principles of international law”. Costa Rica has failed to provide fair and equitable treatment to Infinito’s investments by cancelling Industrias Infinito’s exploitation concession and other mining rights in the manner described above and by denying

justice to Industrias Infinito. Costa Rica's actions are arbitrary, in breach of due process and contrary to Infinito's and Industrias Infinito's legitimate expectations created by, among other things:

- (i) the protection in Costa Rica's Political Constitution against retroactive interference with acquired rights;
- (ii) the provisions of the *Mining Code* and its regulations, which guarantee the right to an exploitation concession once a deposit is proven and technical requirements are met;
- (iii) the terms of the 2002 moratorium on open-pit gold mining, which provide that it does not apply to acquired rights;
- (iv) the 2002 decision of the Supreme Court (Sala IV) confirming that the 2002 moratorium on open-pit gold mining did not apply to the Crucitas project;
- (v) the multiple approvals of various aspects of the project granted by the Costa Rican President and competent authorities, including President Arias' declaration that the project was in the public interest and of national convenience;
- (vi) the 2004 decision of the Supreme Court (Sala IV) confirming that the EIA approval process could proceed;
- (vii) the 2010 decision of the Supreme Court (Sala IV) confirming that the exploitation concession, the declaration of public interest and national convenience, the approval of the EIA and other project approvals were constitutional and lawful; and
- (viii) the repeated assurances and confirmations given by various administrations of the Costa Rican government from 1993 to 2010 that the Crucitas project's approvals were lawful and that the project could proceed.

### **Costa Rica Has Breached Other Obligations Under the *Bilateral Investment Treaty***

100. ***Breach of obligation to provide full protection and security.*** Article II(2)(b) requires that Costa Rica accord to Infinito's investments "full protection and security". In breach of this obligation, Costa Rica has failed to provide Infinito's investments with legal security and has denied justice to Infinito's investments by allowing the Supreme Court (Sala I) to render a decision inconsistent with earlier decisions of the Supreme Court (Sala IV) and by failing to provide a mechanism to resolve the inconsistency. Costa Rica has also denied justice to Infinito's investments by cancelling Industrias Infinito's exploitation concession and other project approvals in legal proceedings in which Industrias Infinito was denied procedural fairness, also in breach of Article II(2)(b).

101. ***Breach of obligation to accord most favoured nation treatment.*** Costa Rica has breached Article IV of the *Bilateral Investment Treaty*, which requires that Costa Rica accord to Infinito's investments "treatment no less favourable than that which, in like circumstances, it grants in respect of [...] investments in its territory of investors of a third State." This most favoured nation obligation requires that Costa Rica grant to Infinito's investments the protections and guarantees afforded by Costa Rica to investors from other states.

102. One of those protections is the umbrella clause set out in Article 3(2) of the *Agreement Between the Republic of Costa Rica and the Republic of China on the Promotion and Reciprocal Protection of Investment* (the "*Costa Rica–Taiwan BIT*"), which provides that "[e]ach Contracting Party shall comply with any obligation assumed regarding investments of investors of the other Contracting Party." Another is the umbrella clause contained in Article 10(3) of the *Agreement Between the Government of the Republic of Korea and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments* (the "*Korea–Costa Rica BIT*"), which provides that "[e]ither Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party." Costa Rica violated these umbrella clause obligations, applicable pursuant to Article IV of the *Bilateral Investment Treaty*, by cancelling the exploitation concession and other project approvals. Its actions were contrary to terms of the exploitation concession and other approvals

respecting the project – which the President had declared in the public interest and of national convenience – which gave Infinito the right to develop and exploit a mine at Crucitas.

103. Another protection is the prohibition against taking unreasonable, arbitrary or discriminatory measures in relation to Infinito’s investments. Article 2(3) of the *Korea-Costa Rica BIT* and Article 4(1) of the *Agreement Between the Republic of Costa Rica and the Swiss Confederation for the Reciprocal Promotion and Protection of Investments* provide that “[n]either Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party”. Article 3(2) of the *Costa Rica-Taiwan BIT* provides that “[n]one of the Contracting Parties shall obstruct, in any manner, either through arbitrary or discriminatory measures, the enjoyment, use, management, conduct, operation and sale or other disposition thereof” of investments of either Contracting Party. Costa Rica’s actions described above violated these obligations, which are applicable pursuant to Article IV of the *Bilateral Investment Treaty*.

104. A third type of protection afforded to Infinito’s investments pursuant to the most favoured nation obligation is the requirement that Costa Rica “by means of its legislation, ensure on its territory [...] a fair and equitable treatment in accordance with the principles of international law to the investments of nationals and enterprises of the other Party and do what is necessary so that the exercise of the right so recognized is not impaired either in law or in fact (translation)”, under Article 3 of the *Agreement Between the Government of Costa Rica and the Government of the French Republic for the Promotion and Protection of Investments*. Costa Rica’s actions described above have breached this provision, which is applicable pursuant to Article IV of the *Bilateral Investment Treaty*.

105. Costa Rica’s actions further, and more generally, constitute treatment of Infinito’s investments in a manner less favourable than that which Costa Rica grants to its own nationals and those of third parties, contrary to Article IV.

106. ***Breach of obligation to provide a favourable investment environment.*** Costa Rica's actions described above have also created an environment unfavourable to Infinito's investments, contrary to Costa Rica's obligations under Article II(1) of the *Bilateral Investment Treaty*.

#### **IV. INFINITO'S ATTEMPTS TO RESOLVE ITS DISPUTE WITH COSTA RICA**

107. On April 4, 2013 and July 30, 2013, Infinito gave notice in writing to Costa Rica, as provided under Article XII (2) of the *Bilateral Investment Treaty*, alleging that measures taken by the Government of Costa Rica, as described in this Request to Arbitration, were in breach of the *Bilateral Investment Treaty* and that Infinito and Industrias Infinito had suffered loss and damages as a result of these breaches.

108. In the notice letters, Infinito invited Costa Rica to discuss an amicable settlement of the dispute. Costa Rica did not respond to either notice letter.

#### **V. RELIEF SOUGHT AND DAMAGES CLAIMED**

109. Article XII(9)(a) and (b) of the *Bilateral Investment Treaty* provides that:

A tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest;
- (b) restitution of property, in which case the award shall provide that the disputing Contracting Party may pay monetary damages and any applicable interest in lieu of restitution.

110. Pursuant to this provision, Infinito requests that the tribunal award to it or to Industrias Infinito:

- (i) damages for expenses of at least USD \$93,896,794;
- (ii) damages for any amounts paid in accordance with the Supreme Court (Sala I)'s decision condemning Industrias Infinito to pay damages to restore the Crucitas project area to its pre-construction state;
- (iii) damages for expenses incurred in connection with the Crucitas project after the filing of this Request for Arbitration;

- (iv) costs associated with these proceedings, including all professional fees and disbursements;
- (v) pre-award and post-award interest at a rate to be fixed by the Tribunal; and
- (vi) such further relief as counsel may advise and this Tribunal may permit.

## VI. FORMAL REQUIREMENTS

111. Articles XII(2), XII(3), XII(4) and Annex II of the *Bilateral Investment Treaty* state that an investor of a contracting party may submit a dispute between it and the other contracting party to arbitration under the *ICSID Convention* provided that:

- (i) both the disputing contracting party and the contracting party of the investor are parties to the *ICSID Convention* (Art. XII(4)(a));
- (ii) the investor has consented in writing to arbitration (Art. XII(3)(a));
- (iii) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of the contracting party concerned or in a dispute settlement procedure of any kind (Art. XII(3)(b));
- (iv) where an investor brings a claim regarding loss or damage suffered by an enterprise the investor directly or indirectly owns or controls, both the investor and the enterprise have given the consent and waiver referred to above (Annex II, Article II(1)(b) and (c));
- (v) no more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage (Art. XII(3)(c));
- (vi) in cases where Costa Rica is a party to the dispute, no judgment has been rendered by a Costa Rican court regarding the measure that is alleged to be in breach of the *Bilateral Investment Treaty* (Art. XII(3)(d)); and

- (vii) the investor has delivered notice in writing to the other contracting party alleging that a measure taken or not taken is in breach of the *Bilateral Investment Treaty*, that the investor has incurred loss or damage by reason of, or arising out of, that breach, and the dispute has not been settled amicably within a period of six months from the date on which that notice was delivered (Art. XII (2)).

112. All of these requirements have been fulfilled in this case:

- (i) The disputing contracting party – Costa Rica – and the contracting party of the Claimant – Canada – are parties to the *ICSID Convention*. This dispute is therefore properly submitted to arbitration under the *ICSID Convention* and the *Bilateral Investment Treaty*.
- (ii) Infinito has consented to arbitration in accordance with the procedures set out in the *ICSID Convention* and the *Bilateral Investment Treaty* and has waived its rights to initiate or continue any other proceedings relating to the measures that are alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of Costa Rica or in a dispute settlement procedure of any kind.<sup>7</sup>
- (iii) Infinito has taken all necessary internal actions to authorize the consent and waiver, as well as the submission of this Request for Arbitration.<sup>8</sup>
- (iv) As of the date of its consent and waiver, Infinito is a company incorporated under the laws of the Province of British Columbia, Canada.<sup>9</sup>
- (v) Infinito's investment Industrias Infinito, which is owned (through Infinito's subsidiary, Crucitas (Barbados) Limited) and controlled by Infinito, has also consented to arbitration in accordance with the procedures set out in the

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<sup>7</sup> **Exhibit C-2**, Consent to Arbitration and Waiver of Infinito

<sup>8</sup> **Exhibit C-3**, Resolution of the Board of Directors of Infinito authorizing the consent to arbitration and waiver and the submission of the Request for Arbitration

<sup>9</sup> **Exhibit C-4**, Certificate of Good Standing of Infinito issued February 5, 2014

*Bilateral Investment Treaty* and under the *ICSID Convention* and has waived its rights to initiate or continue any other proceedings in relation to the measures that are alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of Costa Rica or in a dispute settlement procedure of any kind.<sup>10</sup>

- (vi) Industrias Infinito has taken all necessary internal actions to authorize the consent and waiver, as well as the submission of this Request for Arbitration.<sup>11</sup>
- (vii) Pursuant to Article XII(5) of the *Bilateral Investment Treaty*, Costa Rica has given its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of Article XII.
- (viii) In accordance with Article XII (3)(c) of the *Bilateral Investment Treaty*, not more than three years have elapsed from the date on which Infinito first acquired, or ought to have first acquired, knowledge of Costa Rica's breach of its obligations.
- (ix) No judgment has been rendered by a Costa Rican court regarding the measures that are alleged to be in breach of the *Bilateral Investment Treaty*.
- (x) Infinito delivered notice to Costa Rica on April 4, 2013 and supplementary notice to Costa Rica on July 30, 2013, pursuant to Article XII (2) of the *Bilateral Investment Treaty*.<sup>12</sup>
- (xi) The dispute has not been settled amicably within a period of six months from the date notice was delivered.
- (xii) By fulfilling the conditions set out above, Infinito has accepted Costa Rica's offer, as set out in Article XII(5) of the *Bilateral Investment Treaty*, to consent

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<sup>10</sup> **Exhibit C-5**, Consent to Arbitration and Waiver of Industrias Infinito

<sup>11</sup> **Exhibit C-5**, Consent to Arbitration and Waiver of Industrias Infinito

<sup>12</sup> **Exhibit C-6**, Notice Letter; **Exhibit C-7**, Supplementary Notice Letter

to arbitration of its dispute under the *ICSID Convention*. Infinito's acceptance creates an agreement to arbitrate between Infinito and Costa Rica.<sup>13</sup>

113. Infinito paid a lodging fee of USD \$25,000 to ICSID on February 5, 2014.<sup>14</sup>

**VII. ADDRESS OF PARTIES**

114. The Claimant's address is:

**Infinito Gold Ltd.**  
Suite 600, 1100-1 St. S.W.  
Calgary, Alberta  
Canada T2G 1B1

The Claimant's address for service is:

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

John Terry  
Myriam M. Seers  
Stéphanie Lafrance

Tel: +1.416.865.8245  
Fax: +1.416.865.7380

Email: [jterry@torys.com](mailto:jterry@torys.com)  
[mseers@torys.com](mailto:mseers@torys.com)  
[slafrance@torys.com](mailto:slafrance@torys.com)

115. The Respondent's address is:

**Ministerio de Comercio Exterior (COMEX)**  
Plaza Tempo, costado oeste del Hospital Cima  
Escazu  
San José, Costa Rica

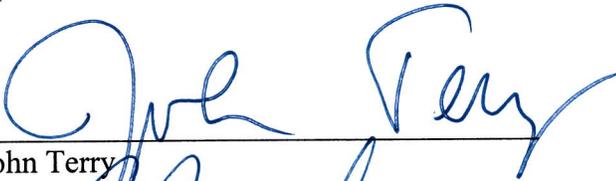
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<sup>13</sup> In the alternative, if the requirements in Article XII(3) have not been met, they do not apply because, by virtue of the most favoured nation provision in Article IV(a) of the *Bilateral Investment Treaty*, Infinito is entitled to rely upon the more favourable provisions of other investment treaties entered into by Costa Rica, including for example the *Costa Rica–Taiwan BIT* and the *Korea–Costa Rica BIT*.

<sup>14</sup> **Exhibit C-8**, Confirmation of payment of lodging fee

116. All of which is respectfully submitted.

DATED: February 6, 2014

  
\_\_\_\_\_  
John Terry

  
\_\_\_\_\_  
Myriam M. Seers

  
\_\_\_\_\_  
Stéphanie Lafrance

Lawyers for the Claimant, Infinito Gold Ltd.<sup>15</sup>

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<sup>15</sup> Torys LLP is authorized and directed to sign this Request for Arbitration on behalf of Infinito pursuant to Article 4 of the Resolution of the Board of Directors of Infinito, **Exhibit C-3**

# **EXHIBIT C-1**

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF CANADA**  
**AND**  
**THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA**  
**FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA, hereinafter referred to as the "Contracting Parties",**

**RECOGNIZING** that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative and to the development of economic cooperation between them,

**HAVE AGREED** as follows:

**ARTICLE I**

**Definitions**

For the purpose of this Agreement:

- (a) "Cultural industries" means natural persons or enterprises engaged in any of the following activities:
- (i) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
  - (ii) the production, distribution, sale or exhibition of film or video recordings;
  - (iii) the production, distribution, sale or exhibition of audio or video music recordings;
  - (iv) the publication, distribution, sale or exhibition of music in print or machine readable form; or
  - (v) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

(b) "enterprise" means:

(i) any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and

(ii) a branch of any such entity;

For further certainty, "business enterprise" means any enterprise which is constituted or organized in the expectation of economic benefit or other business purposes.

(c) "existing measure" means a measure existing at the time this Agreement enters into force;

(d) "financial institution" means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Contracting Party in whose territory it is located;

(e) "financial service" means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

(f) "intellectual property rights" means copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

(g) "investment" means any kind of asset owned or controlled either directly, or indirectly through an enterprise or natural person of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:

(i) movable and immovable property and any related property rights, such as mortgages, liens or pledges;

(ii) shares, stock, bonds and debentures or any other form of participation in an enterprise;

(iii) money, claims to money, and claims to performance under contract having a financial value;

(iv) goodwill;

(v) intellectual property rights;

(vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources;

but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

For further certainty, investment does not mean, claims to money that arise solely from:

- (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Contracting Party to a national or an enterprise in the territory of the other Contracting Party; or
- (ii) the extension of credit in connection with a commercial transaction, such as trade financing, where the original maturity of the loan is less than three years.

Without prejudice to subparagraph (ii) immediately above, a loan to an enterprise where the enterprise is an affiliate of the investor shall be considered an investment.

For the purpose of this Agreement, an investor shall be considered to control an investment if the investor has the power to name a majority of its directors or otherwise to legally direct the actions of the enterprise which owns the investment.

Any change in the form of an investment does not affect its character as an investment.

For greater clarity, returns shall be considered a component of investment. For the purpose of this Agreement, "returns" means all amounts yielded by an investment, as defined above, covered by this Agreement and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income.

(h) "investor" means:

- (i) any natural person possessing the citizenship of one Contracting Party who is not also a citizen of the other Contracting Party; or
- (ii) any enterprise as defined by paragraph (b) of this Article, incorporated or duly constituted in accordance with applicable laws of one Contracting Party;

who owns or controls an investment made in the territory of the other Contracting Party.

For the purpose of this Agreement, in the case of Canada, the term "natural person possessing the citizenship of one Contracting Party" shall include a natural person permanently residing in Canada in accordance with the laws of Canada, including the provisions of the Immigration Act of Canada or any statute replacing it in whole or in part (the "Act"), and without limiting the generality of the foregoing shall include a natural person who:

- (a) has been granted landing within the meaning of the Act;
- (b) has not become a Canadian citizen; and
- (c) has not ceased to be a permanent resident of Canada pursuant to the provisions of the Act.

- (i) "measure" includes any law, regulation, procedure, requirement, or practice;
- (j) "state enterprise" means an enterprise that is governmentally-owned or controlled through ownership interests by a government;

- (k) "territory" means the territory and air space of each Contracting Party, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which each Contracting Party exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;
- (l) "senior managerial personnel" means persons who hold positions of trust, including managers, directors, administrators, superintendents, and general chiefs of companies.

## ARTICLE II

### Promotion and Protection of Investments

- (1) Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory.
- (2) Each Contracting Party shall accord investments of the other Contracting Party:
  - (a) fair and equitable treatment in accordance with principles of international law; and
  - (b) full protection and security.

## ARTICLE III

### Establishment of Investment

- 1. Each Contracting Party shall permit establishment of a new business enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:
  - (a) investors or prospective investors of any third State;
  - (b) its own investors or prospective investors.

For the purpose of this Agreement, "prospective investor" means any natural person or enterprise of one Contracting Party who actually has carried out concrete steps toward making an investment in the territory of the other Contracting Party.

- 2. A Contracting Party may adopt or maintain exceptions to the obligation stated in paragraph (1) above, in the sectors, measures, or with respect to the matters specified in Sections I, II, III and VI of Annex I of this Agreement.

## ARTICLE IV

### Treatment of Established Investment

With respect to investments and the enjoyment, use, management, conduct, operation, expansion, and sale or other disposition thereof, each Contracting Party shall accord treatment no less favourable than that which, in like circumstances, it grants in respect of:

- (a) investments in its territory of investors of a third State;
- (b) investments in its territory of its own investors.

## ARTICLE V

### Management, Directors and Entry of Personnel

1. A Contracting Party may not require that an enterprise of that Contracting Party, that is an investment under this Agreement, appoint to senior management positions individuals of any particular nationality.
2. A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
3. Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall grant temporary entry to citizens of the other Contracting Party employed by an enterprise or a subsidiary or affiliate thereof, in a capacity that is senior managerial or executive or requires specialized knowledge. For further certainty, however, nothing in this Article shall be interpreted as an authorization to carry on a professional practice in the territory of a Contracting Party.

## ARTICLE VI

### Performance Requirements

Neither Contracting Party may impose, in connection with permitting the establishment or acquisition of an investment, or enforce in connection with the subsequent regulation of that investment, any of the requirements set forth in the World Trade Organization Agreement on Trade-Related Investment Measures contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994.

## ARTICLE VII

### Compensation for Losses

Investors of one Contracting Party who suffer losses because their investments on the territory of the other Contracting Party are affected by an armed conflict, a national emergency or a natural disaster on that territory, shall be accorded by such latter Contracting Party, in respect of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which it accords in respect of investments of its own investors or investments of investors of any third State.

## ARTICLE VIII

### Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the fair market value of the investment expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier. Such compensation shall be payable:
  - (a) in Canada, from the date of expropriation with interest at a normal commercial rate;
  - (b) in Costa Rica, from the date of dispossession in accordance with Article 11 of the Expropriation Act No. 7495 of May 3, 1995 (hereinafter referred to as the "Expropriation Act"), with interest at the average deposit rate prevailing in the national banking system;

without delay and shall be effectively realizable and freely transferable. Valuation criteria to determine fair market value shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, including, in the case of Costa Rica, Article 22 of the Expropriation Act.

2. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this Article.
3. The provisions of this Article apply to taxation measures unless the taxation authorities of the Contracting Parties, no later than six months after being notified by an investor that he disputes a taxation measure, jointly determine that the measure in question is not an expropriation.

## ARTICLE IX

### Transfer of Funds

1. Each Contracting Party shall permit all transfers relating to an investment covered by this Agreement, including returns, to be made freely and without delay. Without limiting the generality of the foregoing, such transfers include:
  - (a) funds in repayment of loans related to an investment;
  - (b) the proceeds of the total or partial liquidation of any investment;
  - (c) wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in the territory of the other Contracting Party;
  - (d) any compensation owed to an investor by virtue of Articles VII or VIII of this Agreement.

2. Transfers shall be effected without delay in any convertible currency. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer.

## ARTICLE X

### Subrogation

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such Contracting Party or agency thereof to any right or title held by the investor.
2. A Contracting Party or any agency thereof which is subrogated to the rights of an investor in accordance with paragraph (1) of this Article, shall be entitled in all circumstances, subject only to reasonable procedural requirements, to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

## ARTICLE XI

### Taxation Measures

1. Except where express reference is made thereto, nothing in this Agreement shall apply to taxation measures. For further certainty, nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention or existing tax laws. In the event of any inconsistency between the provisions of this Agreement and any such convention or law, the provisions of that convention or law shall apply to the extent of the inconsistency.
2. An investor claiming that a tax measure of a Contracting Party is in breach of an agreement between the central government authorities of a Contracting Party and the investor concerning an investment, shall be entitled to submit such a claim to arbitration in accordance with the provisions of Article XII, unless the taxation authorities of the Contracting Parties, no later than six months after being notified of the claim by the investor, jointly determine that such claim is without foundation and consequently, there are no grounds for submitting such claim to arbitration under Article XII.
3. An investor may submit a claim relating to taxation measures covered by this Agreement to arbitration under Article XII only if the taxation authorities of the Contracting Parties fail to reach the joint determinations specified in Article VIII(3) or paragraph (2) of this Article within six months of being notified in accordance with the relevant Article.
4. The taxation authorities referred to in Articles VIII(3) and paragraph (2) of this Article shall be the following until notice in writing to the contrary is provided to the other Contracting Party:

- (a) for Canada:

the Assistant Deputy Minister, Tax Policy, of the Department of Finance of Canada;

- (b) for Costa Rica:

the Director of the Department of Direct Tax Office, Ministry of Treasury of Costa Rica.

## ARTICLE XII

### Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that a measure taken or not taken by the former Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach, shall, to the extent possible, be settled amicably between them.
2. If a dispute has not been settled amicably within a period of six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with paragraph (4). The investor will bear the burden of proof to demonstrate:
  - (a) that it is an investor as defined by Article I of this Agreement;
  - (b) that the measure taken or not taken by the Contracting Party is in breach of this Agreement; and
  - (c) that the investor has incurred loss or damage by reason of, or arising out of, that breach.

For the purpose of this Agreement, a dispute is considered to be initiated when the investor of one Contracting Party has delivered notice in writing to the other Contracting Party alleging that a measure taken or not taken by the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

3. An investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if:
  - (a) the investor has consented in writing thereto;
  - (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind;
  - (c) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage; and
  - (d) in cases where Costa Rica is a party to the dispute, no judgement has been rendered by a Costa Rican court regarding the measure that is alleged to be in breach of this Agreement.

4. The dispute may be submitted to arbitration under:
  - (a) The International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18 March, 1965 ("ICSID Convention"), if both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or
  - (b) the Additional Facility Rules of ICSID, if either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or
  - (c) an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) in case neither Contracting Party is a member of ICSID, or if ICSID declines jurisdiction.
5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article.
6. (a) The consent given under paragraph (5), together with either the consent given under paragraph (3), or any relevant provision of Annex II, shall satisfy the requirements for:
  - (i) written consent of the parties to a dispute for purposes of Chapter II (Jurisdiction of the Centre) of the ICSID Convention and for purposes of the Additional Facility Rules; and
  - (ii) an "agreement in writing" for purposes of Article II of the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").
- (b) Any arbitration under this Article shall be held in a State that is a party to the New York Convention, and claims submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of that Convention.
7. A tribunal established under this Article shall decide the issues in dispute in accordance with this Agreement, the applicable rules of international law, and with the domestic law of the host State to the extent that the domestic law is not inconsistent with the provisions of this Agreement or the principles of international law.
8. An investor of one Contracting Party may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Contracting Party that is a party to the dispute, according to the latter's domestic legislation, prior to the institution of the arbitral proceeding.
9. A tribunal may award, separately or in combination, only:
  - (a) monetary damages and any applicable interest;

- (b) restitution of property, in which case the award shall provide that the disputing Contracting Party may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs in accordance with the applicable arbitration rules.

10. An award of arbitration shall be final and binding and shall be enforceable in the territory of each of the Contracting Parties.
11. Any proceedings under this Article are without prejudice to the rights of the Contracting Parties under Articles XIII. Without limiting the generality of the foregoing, however, it is agreed that neither Contracting Party shall give diplomatic protection, or bring an international claim in respect of specific loss or damage suffered by an investor of that Contracting Party, where such loss or damage is, or has been, the subject matter of arbitration under this Article, unless the other Contracting Party fails to comply with the award rendered in such arbitration.

### ARTICLE XIII

#### Disputes between the Contracting Parties

1. Either Contracting Party may request consultations on the interpretation or application of this Agreement. The other Contracting Party shall give sympathetic consideration to the request. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.
2. If a dispute cannot be settled through consultations, it shall, at the request of either Contracting Party, be submitted to an arbitral panel for decision.
3. An arbitral panel shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral panel. The two members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral panel. The Chairman shall be appointed within four months after the receipt, through diplomatic channels, of the request for arbitration.
4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.
5. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs (3) or (4) of this Article.

6. Each Contracting Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral panel may, however, in cases where it considers appropriate, including when it is of the view that one Contracting Party has acted in bad faith, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both contracting Parties. Such decision shall be made unanimously and shall include a written explanation of the arbitral panel's reasons.
7. The Contracting Parties shall, within sixty (60) days of the decision of a panel, reach agreement on the manner in which to implement the decision of the panel. If the Contracting Parties fail to reach agreement, the Contracting Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the panel.

#### ARTICLE XIV

##### Transparency

1. Each Contracting Party shall, to the extent practicable, ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Contracting Party to become acquainted with them.
2. Upon request by either Contracting Party, information shall be exchanged on the measures of the other Contracting Party that may have an impact on new investments or investments covered by this Agreement.

## ARTICLE XV

### Application and Entry into Force

1. This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. For further certainty, this Agreement does not create rights regarding actions taken and completed prior to its entry into force.
2. The two Annexes hereto shall form integral parts hereof.
3. Each Contracting Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.
4. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles I to XIV inclusive, as well as paragraphs (1) and (2) of this Article, shall remain in force for a period of fifteen years.

**IN WITNESS WHEREOF** the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

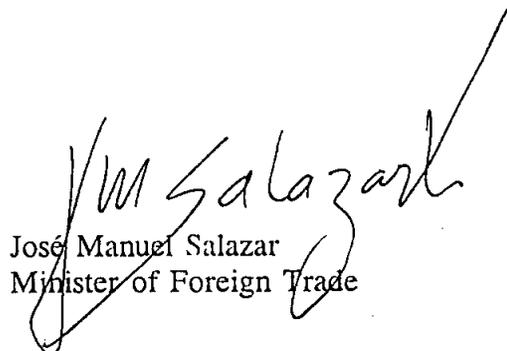
**DONE** at San José, this 18th day of March 1998, in two originals, in the English, French and Spanish languages, each version being equally authentic.

**FOR THE GOVERNMENT  
OF CANADA**



Sergio Marchi  
Minister of International Trade

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF COSTA RICA**



José Manuel Salazar  
Minister of Foreign Trade

## ANNEX I

### General and Specific Exceptions

#### Special Provisions

##### **I. MFN Exceptions:**

1. Articles III(1)(a) and IV(a) shall not apply to treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:
  - (a) establishing, strengthening or expanding a free trade area, customs union, common market or economic union;
  - (b) negotiated within the framework of the World Trade Organization, or any successor organization (including in particular the GATT and the General Agreement on Trade in Services (GATS)), and containing obligations and rights relating to trade in services; or
  - (c) relating to:
    - (i) aviation;
    - (ii) telecommunications transport networks and telecommunications transport services;
    - (iii) fisheries;
    - (iv) maritime matters, including salvage; or
    - (v) financial services.
2. Article III(1)(a) does not apply in respect of financial services.
3. Articles III(1)(a) and IV(a) do not apply in respect of customs brokerage.

## II. National Treatment Exceptions:

1. Articles III(1)(b), IV(b), V(1), V(2) and VI do not apply to:
  - (a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors;
  - (b) any existing non-conforming measures maintained within the territory of a Contracting Party; the continuation or prompt renewal of any such non-conforming measure or any measure referred to in paragraph (a) above; any amendment to such non-conforming measure or any measure referred to in paragraph (a) above, to the extent that such amendment does not decrease the conformity of the measure as it existed immediately before the amendment with those obligations;
  - (c) the right of each Contracting Party to make or maintain exceptions within the following sectors or matters:

### Canada:

- social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care);
- services in any other sector;
- residency requirements for ownership of oceanfront land;
- measures implementing the Northwest Territories Oil and Gas Accords;
- government securities - acquisition, sale or other disposition by nationals of the other Contracting Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government.

### Costa Rica:

- government or social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care);
- services in any other sector;
- concessions in the maritime land zone, as defined by Costa Rican law;
- export promotion programs.

2. The Contracting Parties shall, within a two year period after the entry into force of this Agreement, exchange letters listing, to the extent possible, any existing measures that it may rely on to limit national treatment obligations in accordance with paragraph (1)(b) hereof.
3. Nothing in this Agreement shall prevent either Contracting Party from maintaining its state monopolies existing on the date of entry into force of this Agreement. The Contracting Parties shall, within a two year period after the entry into force of this Agreement, exchange letters listing their existing state monopolies.

### III. General Exceptions and Exemptions:

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.
2. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures:
  - (a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
  - (b) necessary to protect human, animal or plant life or health; or
  - (c) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.
3. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining reasonable measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - (c) ensuring the integrity and stability of a Contracting Party's financial system.
4. Investments in cultural industries are exempt from the provisions of this Agreement.
5. The provisions of Articles II, III, IV, V and VI of this Agreement do not apply to:
  - (a) procurement by a government or state enterprise;

- (b) subsidies or grants provided by a government or a state enterprise, including government-supported loans, guarantees and insurance;
  - (c) any measure denying investors of the other Contracting Party and their investments any rights or preferences provided to the aboriginal peoples of a Contracting Party; or
  - (d) any current or future foreign aid program to promote economic development, whether under a bilateral agreement, or pursuant to a multilateral arrangement or agreement, such as the OECD Agreement on Export Credits.
6. Subject to the provisions contained in the Agreements concluded under the World Trade Organization, including, in particular, Article XIII of the GATT 1994, nothing in this Agreement shall affect the authority of one Contracting Party to decide whether or not to negotiate with the other Contracting Party, or with any third State, quantitative export restrictions, nor its authority to allocate them.
7. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of the latter Contracting Party, and to investments of its investors, if investors of a third State own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

#### **IV. Exceptions to Specific Obligations:**

- 1. In respect of intellectual property rights, a Contracting Party may derogate from Article IV in a manner that is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh, April 15, 1994.
- 2. The provisions of Article VIII do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh, April 15, 1994.

#### **Special Provisions relating to Transfers**

- 1. Notwithstanding the provisions of Article IX, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities;
  - (c) criminal or penal offenses;
  - (d) reports of transfers of currency or other monetary instruments;

- (e) ensuring the satisfaction of judgments in adjudicatory proceedings; or
  - (f) ensuring the payment of income tax obligations.
2. Neither Contracting Party may require its investors to transfer, or penalize its investors that fail to transfer, the returns attributable to investments in the territory of the other Contracting Party.
  3. Paragraph (2) shall not be construed to prevent a Contracting Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in paragraph (1).
  4. Notwithstanding the provisions of Article IX, and without limiting the applicability of paragraph (1) above, a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

**VI. Exclusions from Dispute Settlement (Establishment):**

1. Decisions of a Contracting Party as to whether or not to permit establishment of a new business enterprise, or acquisition of an existing business enterprise or a share of such enterprise, by investors or prospective investors of the other Contracting Party shall not be subject to dispute settlement under Article XII of this Agreement.
2. Further to paragraph (1), decisions by a Contracting Party pursuant to a pre-existing non-conforming measure described in Article II(1)(b) of this Annex as to whether or not to permit an acquisition shall, in addition, not be subject to dispute settlement under Article XIII of this Agreement.

## ANNEX II

### Specific Rules re Article XII

#### Settlement of Disputes between an Investor and the Host Contracting Party

##### **I. Prudential Measures**

1. Where an investor submits a claim to arbitration under Article XII, and the disputing Contracting Party invokes Article III(3) or V(4) of Annex I, the tribunal established pursuant to Article XII shall, at the request of that Contracting Party, seek a report in writing from the Contracting Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The tribunal may not proceed pending receipt of a report under this Article.
2. Pursuant to a request received in accordance with paragraph (1), the Contracting Parties shall proceed in accordance with Article XIII to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Contracting Parties. The report shall be transmitted to the tribunal, and shall be binding on the tribunal.
3. Where, within seventy (70) days of the referral by the tribunal to the Contracting Parties, no request for the establishment of a panel pursuant to paragraph (2) has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter.
4. Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.

##### **II. Damage Incurred by a Controlled Enterprise**

1. A claim that a Contracting Party is in breach of this Agreement, and that an enterprise that is a juridical person incorporated or duly constituted in accordance with applicable laws of that Contracting Party has incurred loss or damage by reason of, or arising out of, that breach, may be brought by an investor of the other Contracting Party acting on behalf of an enterprise which the investor owns or controls directly or indirectly. In such a case:
  - (a) any award shall be made to the affected enterprise;
  - (b) the consent to arbitration of both the investor and the enterprise shall be required;
  - (c) both the investor and enterprise must waive any right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind; and

(d) the investor may not make a claim if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that it has incurred loss or damage.

2. Notwithstanding paragraph (1)(a) above, where a disputing Contracting Party has deprived a disputing investor of control of an enterprise, the following shall not be required:

(a) a consent to arbitration by the enterprise under paragraph (1)(b) above; and

(b) a waiver from the enterprise under paragraph (1)(c) above.

## **EXHIBIT C-2**



INFINITO GOLD LTD.

February 3, 2014

The Secretary-General  
International Centre for Settlement of Investment Disputes  
1818 H Street N.W.  
Washington, D.C.  
U.S.A. 20422

Dear Madam Secretary-General:

**Re: Consent to Arbitration and Waiver of Infinito Gold Ltd.**

I, John Morgan, President and Chief Executive Officer of Infinito Gold Ltd. ("Infinito"), on behalf of Infinito:

1. Consent to arbitration of Infinito's dispute with the Government of Costa Rica concerning the Crucitas project in accordance with the procedures set out in the *Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments* (the "*Bilateral Investment Treaty*") under the arbitration rules of the International Centre for the Settlement of Investment Disputes ("ICSID");
2. Waive Infinito's right to initiate or continue any other proceedings in relation to the measures of the Government of Costa Rica that are alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of Costa Rica or in a dispute resolution procedure of any kind;
3. Consent to the submission of a request for arbitration before ICSID to the Secretary-General of ICSID;
4. Authorize and direct Infinito's lawyers Torys LLP to sign the request for arbitration on Infinito's behalf; and
5. Authorize Torys LLP to act on Infinito's behalf with respect to all aspects of the arbitration before ICSID.

Yours truly,

John Morgan  
President and Chief Executive Officer

# **EXHIBIT C-3**



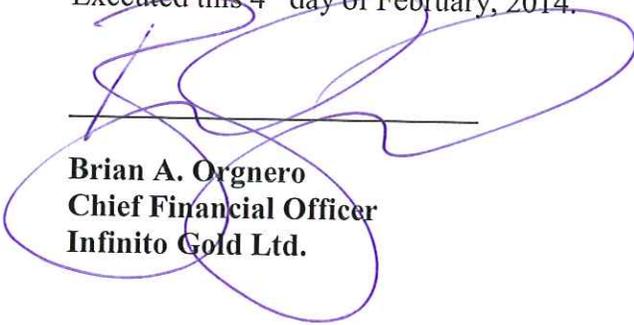
# INFINITO GOLD LTD.

At the Infinito Gold Ltd. ("Infinito") Board of Directors meeting held by telephone conference on February 3, 2014, in the presence of Brian A. Orgnero, Chief Financial Officer of Infinito Gold Ltd. the following resolution was passed.

**BE IT RESOLVED THAT:**

1. Infinito consents to arbitration of its dispute with the Government of Costa Rica concerning the Crucitas project in accordance with the procedures set out in the *Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments* (the "Bilateral Investment Treaty") under the arbitration rules of the International Centre for the Settlement of Investment Disputes ("ICSID");
2. Infinito waives its right to initiate or continue any other proceedings in relation to the measures that are alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of Venezuela or in a dispute settlement procedure of any kind;
3. Infinito consents to the submission of a request for arbitration before ICSID to the Secretary-General of ICSID;
4. Infinito authorizes and directs its lawyers Torys LLP to sign the request for arbitration on its behalf;
5. Infinito authorizes Torys LLP to act on its behalf with respect to all aspects of the request for arbitration before ICSID; and
6. Infinito authorizes John Morgan, its President and Chief Executive Officer, to take all steps necessary to implement this resolution.

Executed this 4<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
**Brian A. Orgnero**  
**Chief Financial Officer**  
**Infinito Gold Ltd.**

# **EXHIBIT C-4**



Number: **BC0225083**

**CERTIFICATE  
OF  
GOOD STANDING**

***BUSINESS CORPORATIONS ACT***

***I Hereby Certify that***, according to the corporate register maintained by me, **INFINITO GOLD LTD.** was incorporated as a company under the laws of the Province of British Columbia, is a valid and existing company and is, with respect to the filing of annual reports, in good standing.

***Issued*** under my hand at Victoria, British Columbia

*On February 5, 2014*

**CAROL PREST**

*Registrar of Companies*  
Province of British Columbia  
Canada



# **EXHIBIT C-5**



INDUSTRIAS INFINITO S.A.

February 3, 2014

The Secretary-General  
International Centre for Settlement of Investment Disputes  
1818 H Street N.W.  
Washington, D.C.  
U.S.A. 20422

Dear Madam Secretary-General:

**Re: Consent to Arbitration and Waiver of Industrias Infinito S.A.**

I, John Morgan, President of Industrias Infinito S.A. ("Industrias Infinito"), on behalf of Industrias Infinito:

1. Consent to arbitration of Infinito Gold Ltd.'s dispute with the Government of Costa Rica concerning the Crucitas project in accordance with the procedures set out in the *Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments* (the "*Bilateral Investment Treaty*") under the arbitration rules of the International Centre for the Settlement of Investment Disputes ("ICSID"); and
2. Waive Industrias Infinito's right to initiate or continue any other proceedings in relation to the measures of the Government of Costa Rica that are alleged to be in breach of the *Bilateral Investment Treaty* before the courts or tribunals of Costa Rica or in a dispute resolution procedure of any kind.

I hereby solemnly declare that I am duly authorized to execute this waiver on behalf of Industrias Infinito.

Yours truly,

  
John Morgan  
President

# **EXHIBIT C-6**



INFINITO GOLD LTD.



April 4, 2013

Señora: Anabel González Campabadal  
Ministra de Comercio Exterior.  
Ministerio de Comercio Exterior de Costa Rica (COMEX).  
San José, Costa Rica.

Dear Minister Campabadal:

**Re: Notice of Breach of the Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments**

I am writing on behalf of Infinito Gold Ltd. ("Infinito"), a company incorporated under the laws of British Columbia, Canada, that indirectly owns 100 per cent of the shares of its investment Industrias Infinito S.A. ("Industrias Infinito"), a company incorporated under the laws of Costa Rica.

Infinito hereby gives notice to the Republic of Costa Rica (the "Republic") that Infinito considers the Republic to be in breach of the provisions of the Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments (the "Bilateral Investment Treaty"), in respect of the Republic's treatment of Infinito's investment Industrias Infinito and the Las Crucitas mining concession held by Industrias Infinito. Infinito is delivering this notice to the Republic in accordance with Article XII of the Bilateral Investment Treaty.

We invite the Republic to settle this dispute amicably pursuant to Article XII(1) of the Bilateral Investment Treaty. However, if the dispute cannot be settled, Infinito is prepared to take all necessary steps to pursue its arbitral remedies under the Bilateral Investment Treaty.

Since 1993, Industrias Infinito has had exclusive rights to mine gold at a property located in Las Crucitas de Cutris, in the canton of San Carlos, Costa Rica (the "Las Crucitas Project"). Over the past 19 years, Industrias Infinito has invested more than US \$93 million in developing the Las Crucitas Project, which is located in an area of high unemployment and widespread poverty in the northern part of Costa Rica. Throughout this period, as part of the development of the Las Crucitas Project, Industrias Infinito has actively led and financed an extensive corporate social responsibility program, including educational and training programs, road improvements, electrification of small villages, school improvements and many other projects intended to enhance sustainability and social progress. On the basis of today's gold prices, the value of the Las Crucitas Project, if it is able to be fully developed, is in excess of US \$1 billion.

Industrias Infinito completed all the environmental, social and technical studies and obtained all approvals required under Costa Rican law to develop and operate the Las Crucitas Project. In February 2008, the Secretaría Técnica Nacional Ambiental (“SETENA”) approved a modified Environmental Impact Study, which reduced the area of the mine by approximately 65 per cent and allowed for the recovery of the underlying hard rock as well as the soft superficial saprolite or weathered rock material that had received environmental approval in 2007. In May 2008, the Ministerio de Ambiente y Energía confirmed Industrias Infinito’s Exploitation Concession. On October 17, 2008, then President Oscar Arias issued a Presidential Decree declaring the Crucitas Project to be in the national interest, allowing a change of land use permit to be obtained and for site clearing to commence. On April 16, 2010, in response to a claim brought by a public interest group that had halted clearing and mine construction activities for 18 months, the Constitutional Chamber of the Supreme Court ruled that all of the objections that had been raised against the project were without merit (with one exception that was resolved by the time the legal process was completed). The Constitutional Chamber’s decision, which had involved a project site inspection in addition to oral hearings, included 340 pages of reasons released in July 9, 2010, which addresses all constitutional, legal and environmental/technical issues in depth.

Notwithstanding this complete and definitive ruling from the Supreme Court’s Constitutional Chamber allowing the Crucitas Project to proceed, Industrias Infinito’s concession to develop Las Crucitas has been annulled by a decision made initially on November 24, 2010, by a lower Costa Rican court -- the Tribunal Contencioso Administrativo – and affirmed on November 30, 2011 by the Administrative Chamber of the Supreme Court. In its decision, the Administrative Chamber reached a conclusion that was the opposite of the conclusion the Constitutional Chamber of the same Supreme Court had reached only a year and a half earlier. The Administrative Chamber’s decision upheld the Tribunal Contencioso Administrativo’s decision to annul Industrias Infinito’s concession and invalidate its environmental approvals.

On November 11, 2011, Industrias Infinito had requested that the Constitutional Chamber enforce its decision in order to prevent any conflict between the Constitutional Chamber’s decision affirming the validity of Industrias Infinito’s permits and approvals and any inconsistent decision from the Tribunal Contencioso Administrativo or the Administrative Chamber of the Supreme Court. To date, the Constitutional Chamber has taken no action to respond to this request. As a result, Infinito and its investment Industrias Infinito find themselves in a legal vacuum, subject to two contradictory decisions with no basis under the Costa Rican legal system for resolving this conflict.

These inconsistent Supreme Court decisions, and the failure of the Costa Rican justice system to resolve them, have created a situation of legal insecurity that has frustrated Industrias Infinito’s ability to develop the Las Crucitas Project in accordance with the concessions and permits it had been granted, thereby constituting unlawful expropriation in violation of Article VIII of the Bilateral Investment Treaty. These actions and inactions also violate, among other things, the Republic’s obligations under Article II(2) to accord Industrias Infinito fair and equitable treatment in accordance with the principles of international law and full protection and security and under Article IV to grant Industrias Infinito most-favoured nation and national treatment. Throughout the two decades that it worked to diligently develop the Las Crucitas Project, Industrias Infinito has complied in good faith with its obligations under Costa Rican law and had a legitimate expectation that it would be treated fairly, transparently and consistently by the

Costa Rican courts and other Costa Rican authorities. Contrary to these legitimate expectations, Industrias Infinito has not been treated fairly, transparently or consistently, and finds itself in a situation of complete legal insecurity that prevents it from further developing the Las Cristinas Project.

Infinito Gold and its investment Industrias Infinito have incurred loss or damage by reason of and arising out of those breaches, which losses include the amounts invested by Infinito Gold through Industrias Infinito in the Las Crucitas Project as well as lost profits Infinito Gold through Industrias Infinito would have earned from the development of the Las Crucitas mine.

I and my colleagues look forward to meeting with you soon so we can discuss this dispute. We sincerely hope that this dispute can be amicably resolved. Our goal remains to develop the Las Crucitas Project for the benefit of the communities surrounding the mine and for the people of Costa Rica as a whole.

Yours sincerely,

**Infinito Gold Ltd.**



**John Morgan, President and Chief  
Executive Officer**

cc: Canadian Embassy to Costa Rica;  
Chairman of the Board;  
Infinito Gold Ltd. Board of Directors; and  
Torys LLP

# **EXHIBIT C-7**



**INFINITO GOLD LTD.**

July 30, 2013

Mrs: Anabel González Campabadal  
Ministra de Comercio Exterior  
Ministerio de Comercio Exterior de Costa Rica (COMEX)  
San José, Costa Rica

Dear Minister González:

**Re: Supplementary Notice of Breach of the Agreement Between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investment (the “Bilateral Investment Treaty”)**

I am writing, further to my letter to you dated April 4, 2013 (the “April 4, 2013 Notice Letter” (attached)), to provide supplementary notice of additional measures of Costa Rica that Infinito Gold Ltd. (“Infinito”) considers to be in breach of the Bilateral Investment Treaty and by reason of which Infinito and its investment Industrias Infinito S.A. (“Industrias Infinito”) have suffered loss or damages.

These measures are as follows:

- 1) the decision 2013008211 of the Constitutional Chamber of the Supreme Court dated June 19, 2013 declaring inadmissible Industrias Infinito’s request that the Constitutional Chamber enforce its decision to resolve the conflict between the Constitutional Chamber’s decision affirming the validity of Industrial Infinito’s permits and approvals and the inconsistent decisions of the Tribunal Contencioso Administrativo and, subsequently, the First Chamber of the Supreme Court, thereby exacerbating the situation of legal insecurity in which Industrias Infinito finds itself, as described in the April 4, 2013 Notice Letter; and
- 2) Law No. 8904, which entered into force on February 10, 2011, and which arbitrarily and discriminatorily prohibits Industrias Infinito from being able to reapply for a surface mining concession or to sell or lease its land to be developed for surface mining by a third party, contrary to, among other things, Industrias Infinito’s legitimate expectations, and without due process or compensation.

For the reasons described in the April 4, 2013 Notice Letter as well as above, among others, these measures constitute violations of Article VIII (Expropriation), Article II (Promotion and Protection of Investment) and Article IV (Treatment of Established Investment) of the Bilateral Investment Treaty and have resulted in the loss and damages described in the April 4, 2013 Notice Letter, among other loss and damage.

Suite 600, 1100 1<sup>st</sup> Street S.E., Calgary, Alberta, Canada T2G1B1  
Tel: (403) 444-5191 Fax: (403) 231-7716 Email: [info@infinitogold.com](mailto:info@infinitogold.com)  
TSX-V: IG  
[www.infinitogold.com](http://www.infinitogold.com)

As I indicated in the April 4, 2013 Notice Letter, I and my colleagues sincerely hope that this dispute can be amicably resolved and look forward to meeting with you soon to discuss how that can be done.

Yours sincerely,

**Infinito Gold Ltd.**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**John Morgan**  
**President and Chief Executive Officer**

cc: John Terry, Torys LLP,  
Chairman of the Board,  
Infinito Gold Ltd. Board of Directors,  
Canadian Embassy to Costa Rica.

# **EXHIBIT C-8**

Template Name:	<b>N/A</b>		
Payment Type:	<b>Payment to Customer</b>		
Payment ID:	<b>76679140205001</b>	TD Payment ID:	<b>14020588747400</b>

**Sender Information**  
 When sending a wire payment, TD Bank will automatically populate sender name and address based on the settlement account selected.

**Beneficiary Information**  
 Beneficiary Name: INTL CENTRE FOR SETTLEMENT OF INVE  
 Street: MSN J2-200 - 1818 H ST - NW  
 City: WASHINGTON D C  
 Prov/State: WASHINGTON - WA Country: UNITED STATES - US  
 Payment Destination: Other Financial Institution

**Beneficiary Account Information**  
 Beneficiary's Account: 226000253217

**Beneficiary's Bank Information**  
 Beneficiary Bank Name: BANK OF AMERICA  
 Bank Id: SWIFT CODE BOFAUS3N  
 Street: 730 - 15TH STREET NW -7TH FLR  
 City: WASHINGTON D C 20005  
 Prov/State: WASHINGTON - WA Country: UNITED STATES - US

**Intermediary Bank Information**  
 Intermediary Bank Name:  
 Bank Id:  
 Street:  
 City:  
 Prov/State: Country:

Due Date	Value Date	Payment Must be Sent to Bank Before:
02/05/2014	02/05/2014	<a href="#">View Cutoff Table</a>

Payment Currency	Payment Amount
USD	25,000.00

Settlement Currency	FX Type/ Contract Number	Exchange Rate	Settlement Amount	Settlement Account
USD	Bulletin	1.000000	<b>25,000.00</b>	01020 7379235

**Your Reference**  
 TT 8611

**Reason for Wire Payment**  
 PAYMENT

**Instructions**  
 Beneficiary: ICSID LODGING FEE - MYRIAM SEERS  
 TD Bank: