

**CONVERTIBLE DEBENTURE INDENTURE**

Made as of December 23, 2021

Between

**PROPHECY DEFI INC.**

and

**TSX TRUST COMPANY**

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## CONVERTIBLE DEBENTURE INDENTURE

This Agreement is made as of December 23, 2021,

BETWEEN:

**PROPHECY DEFI INC.** (the “**Corporation**”)  
a company incorporated pursuant to the laws of the Province of Ontario

AND

**TSX TRUST COMPANY** (the “**Trustee**”)  
a trust company existing under the laws of Canada and registered to carry on  
business in the Province of Ontario

RECITALS

WHEREAS the Corporation wishes to create and issue the Debentures (as defined herein) in the manner and subject to the terms and conditions of this Indenture;

NOW THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Corporation hereby appoints the Trustee as the debenture trustee to hold the rights, interests and benefits contained herein for and on behalf of those Persons who from time to time become holders of Debentures issued pursuant to this Indenture and the parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Indenture and in the Debentures, unless there is something in the subject matter or context inconsistent therewith, the expressions following shall have the following meanings, namely:

- 1.1.1 “**144A U.S. Legend**” has the meaning ascribed thereto in Section 2.5.4;
- 1.1.2 “**90% Redemption Right**” has the meaning ascribed thereto in Section 2.4.11(b);
- 1.1.3 “**Additional Debentures**” means Debentures of any one or more series, other than the first series of Debentures, being the Initial Debentures, issued under this Indenture;
- 1.1.4 “**Additional Amounts**” has the meaning ascribed thereto in Section 7.10;
- 1.1.5 “**Agency Agreement**” means the agency agreement entered into on December 23, 2021 among the Corporation and the Agents in respect of the Offering;
- 1.1.6 “**Agents**” means Canaccord Genuity Corp. and INFOR Financial Inc.;
- 1.1.7 “**Agents’ Option**” means the option of the Agents to increase the size of the Offering by up to an additional 1,500 Units;

- 1.1.8 **“Applicable Securities Legislation”** means applicable securities laws (including rules, regulations, policies and instruments) in each of the applicable provinces and territories of Canada;
- 1.1.9 **“Approved Bank”** has the meaning ascribed thereto in Section 14.8;
- 1.1.10 **“Auditors of the Corporation”** means an independent firm of chartered accountants duly appointed as auditors of the Corporation;
- 1.1.11 **“Authenticated”** means with respect to the issuance of an uncertificated Debenture, one in respect of which the Debenture Trustee has completed all Internal Procedures such that the particulars of such Uncertificated Debentures entered in the register of holders of Debentures, and “Authenticate”, “Authenticating” and “Authentication” have the appropriate correlative meanings;
- 1.1.12 **“Beneficial Holder”** means any Person who holds a beneficial interest in a Debenture that is represented by a Debenture Certificate or an Uncertificated Debenture registered in the name of such Person’s nominee;
- 1.1.13 **“Board of Directors”** means the board of directors of the Corporation or any committee thereof;
- 1.1.14 **“Business Day”** means any day other than a Saturday, Sunday or any other day that the Trustee in the City of Toronto, Ontario is not generally open for business;
- 1.1.15 **“Change of Control”** means (i) any event as a result of or following which any Person, or group of Persons “acting jointly or in concert” within the meaning of Applicable Securities Legislation, beneficially owns or exercises control or direction over an aggregate of more than 50% of the then outstanding Common Shares; or (ii) the sale or other transfer of all or substantially all of the consolidated assets of the Corporation. A Change of Control will not include a sale, merger, reorganization or other similar transaction if the previous holders of the Common Shares hold at least 50% of the voting shares of such merged, reorganized or other continuing entity (and in the case of a sale of all or substantially all of the assets, in the entity which has acquired such assets) immediately following the completion of such transaction;
- 1.1.16 **“Change of Control Notice”** has the meaning ascribed thereto in Section 2.4.11(a);
- 1.1.17 **“Change of Control Purchase Date”** has the meaning ascribed thereto in Section 2.4.11(a);
- 1.1.18 **“Change of Control Purchase Offer”** has the meaning ascribed thereto in Section 2.4.11(a);
- 1.1.19 **“Change of Control Purchase Option”** has the meaning ascribed thereto in Section 2.4.11(a);
- 1.1.20 **“Change of Control Purchase Price”** has the meaning ascribed thereto in Section 2.4.11(a);

- 1.1.21 **“Common Shares”** means the common shares in the capital of the Corporation, as such common shares are constituted on the date of execution and delivery of this Indenture; provided that in the event of a change or a subdivision, revision, reduction, combination or consolidation thereof, any reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up, or such successive changes, subdivisions, redivisions, reductions, combinations or consolidations, reclassifications, capital reorganizations, consolidations, amalgamations, arrangements, mergers, sales or conveyances or liquidations, dissolutions or windings-up, then, subject to adjustments, if any, having been made in accordance with the provisions of Section 6.3, **“Common Shares”** shall, as the context may require, mean the shares or other securities or property resulting from such change, subdivision, redivision, reduction, combination or consolidation, reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up;
- 1.1.22 **“Conversion Price”** means the dollar amount for which each Common Share may be issued from time to time upon the conversion of Debentures or any series of Debentures which are by their terms convertible in accordance with the provisions of Article 6;
- 1.1.23 **“Corporation”** means Prophecy DeFi Inc. and includes any successor to or of the Corporation which shall have complied with the provisions of Article 10;
- 1.1.24 **“Counsel”** means a barrister or solicitor or firm of barristers or solicitors retained or employed by the Trustee or retained or employed by the Corporation and reasonably acceptable to the Trustee;
- 1.1.25 **“CSE”** means Canadian Securities Exchange;
- 1.1.26 **“Current Market Price”** means, generally, the VWAP of the Common Shares on the CSE, if the Common Shares are listed on the CSE, for the 10 consecutive trading days ending on the date immediately preceding the applicable date. If the Common Shares are not listed on the CSE, reference shall be made for the purpose of the above calculation to the principal securities exchange or market on which the Common Shares are listed or quoted or if no such prices are available **“Current Market Price”** shall be the fair value of a Common Share as reasonably determined by the Board of Directors;
- 1.1.27 **“Date of Conversion”** has the meaning ascribed thereto in Section 6.2.2;
- 1.1.28 **“Debenture Certificate”** means a certificate evidencing Debentures substantially in the form attached as Schedule A hereto;
- 1.1.29 **“Debenture Liabilities”** has the meaning ascribed thereto in Section 5.1;
- 1.1.30 **“Debentures”** means the debentures, notes or other evidence of indebtedness of the Corporation issued and certified or Authenticated hereunder, or deemed to be issued and certified or Authenticated hereunder, including, without limitation, the Initial Debentures, and for the time being outstanding, whether in definitive, uncertificated or interim form;
- 1.1.31 **“Debentureholders”** or **“holders”** means the Persons for the time being entered in the register for Debentures as registered holders of Debentures or any transferees of such Persons by endorsement or delivery;

- 1.1.32 **“Defeasance Option”** has the meaning ascribed thereto in Section 9.5.1;
- 1.1.33 **“Defeased Debentures”** has the meaning ascribed thereto in Section 9.6.2;
- 1.1.34 **“Depository”** or **“CDS”** means CDS Clearing and Depository Services Inc. and its successors in interest;
- 1.1.35 **“Depository Participant”** means a broker, dealer, bank, other financial institution or other Person for whom from time to time, a Depository effects book entries for a Global Debenture deposited with the Depository;
- 1.1.36 **“Distributed Securities”** has the meaning ascribed thereto in Section 6.3(e);
- 1.1.37 **“Event of Default”** has the meaning ascribed thereto in Section 8.1;
- 1.1.38 **“Expiration Date”** has the meaning ascribed thereto in Section 6.3(f);
- 1.1.39 **“Expiration Time”** has the meaning ascribed thereto in Section 6.3(f);
- 1.1.40 **“Extraordinary Resolution”** has the meaning ascribed thereto in Section 12.12;
- 1.1.41 **“Forced Conversion Date”** has the meaning ascribed thereto in Section 6.5;
- 1.1.42 **“Forced Conversion Notice”** has the meaning ascribed thereto in Section 6.5;
- 1.1.43 **“Fully Registered Debentures”** means Debentures registered as to both principal and interest;
- 1.1.44 **“Global Debenture”** means a Debenture that is issued to and registered in the name of the Depository, or its nominee, pursuant to Section 2.5 for purposes of being held by or on behalf of the Depository as custodian for Participants in the Depository’s book- based system or non-certificated inventory system;
- 1.1.45 **“IFRS”** means International Financial Reporting Standards issued by the International Accounting Standards Board (including as further described in Section 1.16);
- 1.1.46 **“Indenture”**, **“hereto”**, **“herein”**, **“hereby”**, **“hereunder”**, **“hereof”** and similar expressions refer to this Indenture and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto;
- 1.1.47 **“Initial Debentures”** means the Debentures designated as “10.0% Unsecured Convertible Debentures” and described in Section 2.4;
- 1.1.48 **“Interest Payment Date”** means the last day of March, June, September and December of each year;
- 1.1.49 **“Internal Procedures”** means in respect of the making of any one or more entries to, changes in or deletions of any one or more entries in the register of Debentureholders at any time (including without limitation, original issuance or registration of transfer of ownership) the minimum number of the Trustee’s internal procedures customary at such

time for the entry, change or deletion made to be complete under the operating procedures followed at the time by the Trustee;

- 1.1.50 **“Material Subsidiary”** means any Subsidiary of the Corporation which has consolidated assets equal to or greater than 5% of the consolidated assets of the Corporation and its Subsidiaries;
- 1.1.51 **“Maturity Account”** means an account or accounts required to be established by the Corporation (and which shall be maintained by and subject to the control of the Trustee) for each series of Debentures issued pursuant to and in accordance with this Indenture;
- 1.1.52 **“Maturity Date”** means the date specified for maturity of any Debentures, which for the Initial Debentures shall be December 23, 2024;
- 1.1.53 **“Merger Event”** has the meaning ascribed thereto in Section 6.3(d);
- 1.1.54 **“NI 62-104”** means National Instrument 62-104 — *Take-Over Bids and Issuer Bids*;
- 1.1.55 **“Offering”** means the brokered private placement offering of up to 11,500 Units, which includes the Agents’ Option pursuant to the Agency Agreement;
- 1.1.56 **“Offeror’s Notice”** has the meaning ascribed thereto in Section 11.3;
- 1.1.57 **“Officer’s Certificate”** means a certificate of the Corporation signed by any authorized officer or director of the Corporation, in their capacity as an officer or director of the Corporation, and not in their personal capacity;
- 1.1.58 **“Participant”** means a Person recognized by CDS as a participant in the non-certificated inventory system administered by CDS;
- 1.1.59 **“Periodic Offering”** means an offering of Debentures of a series from time to time, the specific terms of which Debentures, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Corporation upon the issuance of such Debentures from time to time;
- 1.1.60 **“Person”** includes an individual, corporation, company, partnership, joint venture, association, trust, trustee, unincorporated organization or government or any agency or political subdivision thereof (and for the purposes of the definition of **“Change of Control”**, in addition to the foregoing, **“Person”** shall include any syndicate or group that would be deemed to be a **“Person”** under NI 62-104);
- 1.1.61 **“Privacy Laws”** has the meaning ascribed thereto in Section 14.18;
- 1.1.62 **“Purchased Common Shares”** has the meaning ascribed thereto in Section 6.3(f);
- 1.1.63 **“Redemption Date”** has the meaning ascribed thereto in section 4.3;
- 1.1.64 **“Redemption Notice”** has the meaning ascribed thereto in section 4.3;

- 1.1.65 **“Redemption Price”** means, in respect of a debenture, an amount equal to the principal amount then outstanding, plus accrued and unpaid interest thereon up to (but excluding) the redemption date fixed for such debentures, payable on the redemption date;
- 1.1.66 **“Secured Creditor”** means a holder or holders of Secured Indebtedness and includes any representative or representatives, agent or agents or trustee or trustees of any such holder or holders;
- 1.1.67 **“Secured Indebtedness”** means the principal of, the premium (if any) and interest and other obligations on secured indebtedness, statutory liens (other than statutory liens where the party is defending same in good faith), secured bank or other institutional indebtedness, and secured project indebtedness, in each case owing by the Corporation, or renewals, extensions and refunding of such indebtedness, including, without limitation: (a) obligations of the Corporation or its Subsidiaries under any swap, hedging or other similar contracts or arrangements; (b) all costs and expenses incurred by or on behalf of the holder of any Secured Indebtedness in enforcing payment or collection of any such Secured Indebtedness, including enforcing any security interest securing the same. **“Secured Indebtedness”** shall not include: (a) any indebtedness that would otherwise be Secured Indebtedness if it is expressly stated to be subordinate to or rank *pari passu* with the Debentures; (b) any indebtedness of the Corporation or a Subsidiary to a current or former director or officer that would otherwise be Secured Indebtedness; and (c) any indebtedness of the Corporation or a Subsidiary to any shareholder of the Corporation, or a Subsidiary, respectively, that would otherwise be Secured Indebtedness;
- 1.1.68 **“Serial Meeting”** has the meaning ascribed thereto in Section 12.2.2(a);
- 1.1.69 **“Spinoff Securities”** has the meaning ascribed thereto in Section 6.3(e);
- 1.1.70 **“Spinoff Valuation Period”** has the meaning ascribed thereto in Section 6.3(e);
- 1.1.71 **“Subsidiary”** has the meaning ascribed thereto in the *Securities Act* (Ontario);
- 1.1.72 **“Time of Expiry”** means the time of expiry of certain rights with respect to the conversion of Debentures under Article 6 which is to be set forth separately in the form and terms for each series of Debentures which by their terms are to be convertible, and has the meaning ascribed thereto in Section 2.4.6 with respect to the Initial Debentures;
- 1.1.73 **“trading day”** means, with respect to the CSE or other market for securities, any day on which such exchange or market is open for trading or quotation;
- 1.1.74 **“Trustee”** means TSX Trust Company, or its successor or successors for the time being as trustee hereunder;
- 1.1.75 **“Uncertificated Debenture”** means any Debenture which is not issued as part of a Debenture Certificate;
- 1.1.76 **“Unit”** means a unit consisting of \$1,000 principal amount of Initial Debenture and 1,667 common share purchase warrants of the Corporation issuable in accordance with the term of the Agency Agreement;

- 1.1.77 **“United States”** or **“U.S.”** means the United States of America, its territories and possessions, any state of the United States and the District of Columbia;
- 1.1.78 **“U.S. Securities Act”** means the U.S. Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder;
- 1.1.79 **“U.S. Securities Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder;
- 1.1.80 **“VWAP”** means the per share volume weighted average trading price of the Common Shares for the applicable period (which must be calculated utilizing days in which the Common Shares actually trade) on the CSE (or if the Common Shares are no longer traded on the CSE, on such other recognized stock exchange as the Common Shares are then traded);
- 1.1.81 **“Withholding Taxes”** has the meaning ascribed to it in Section 7.10; and
- 1.1.82 **“Written Direction of the Corporation”** means an instrument in writing signed by any one officer or director of the Corporation.

## **1.2 Meaning of “Outstanding”**

Every Debenture certified and delivered by the Trustee or every Uncertificated Debenture authenticated by the Trustee by completing its Internal Procedures hereunder shall be deemed to be outstanding until it is cancelled, converted or redeemed or delivered to the Trustee for cancellation, conversion or redemption for monies and/or Common Shares, as the case may be, or the payment thereof shall have been set aside under Section 9.2, provided that:

- (a) Debentures which have been partially redeemed, purchased or converted shall be deemed to be outstanding only to the extent of the unredeemed, unpurchased or unconverted part of the principal amount thereof;
- (b) when a new Debenture has been issued in substitution for a Debenture which has been lost, stolen or destroyed, only one of such Debentures shall be counted for the purpose of determining the aggregate principal amount of Debentures outstanding; and
- (c) for the purposes of any provision of this Indenture entitling holders of outstanding Debentures to vote, sign consents, requisitions or other instruments or take any other action under this Indenture, or to constitute a quorum of any meeting of Debentureholders, Debentures owned directly or indirectly, legally or equitably, by the Corporation shall be disregarded (and the Corporation shall provide a list of such aforementioned holdings to the Trustee, upon request) except that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action, or on the holders of Debentures present or represented at any meeting of Debentureholders, only the Debentures which the Trustee knows are so owned shall be so disregarded; and

- (ii) Debentures so owned which have been pledged in good faith other than to the Corporation shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Debentures, sign consents, requisitions or other instruments or take such other actions in its discretion free from the control of the Corporation or a Subsidiary of the Corporation.

### **1.3 Interpretation**

In this Indenture:

- (a) words importing the singular number or masculine gender shall include the plural number or the feminine or neuter genders, and vice versa;
- (b) all references to Articles and Schedules refer, unless otherwise specified, to articles of and schedules to this Indenture;
- (c) all references to Sections, subsections or clauses refer, unless otherwise specified, to Sections, subsections or clauses of this Indenture;
- (d) words and terms denoting inclusiveness (such as "include" or "includes" or "including"), whether or not so stated, are not limited by and do not imply limitation of their context or the words or phrases which precede or succeed them;
- (e) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time;
- (f) unless otherwise indicated, reference to a statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time; and
- (g) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated by including the day on which the period commences but excluding the day on which the period ends.

### **1.4 Headings, etc.**

The division of this Indenture into Articles and Sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture or of the Debentures.

### **1.5 Time of Essence**

Time shall be of the essence of this Indenture.

### **1.6 Monetary References**

Whenever any amounts of money are referred to herein, such amounts shall be deemed to be in lawful money of Canada unless otherwise expressed.

### **1.7 Invalidity, etc.**

Any provision hereof which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof.

### **1.8 Language**

Each of the parties hereto hereby acknowledges that it has consented to and requested that this Indenture and all documents relating hereto, including, without limiting the generality of the foregoing, the form of Debenture attached hereto as Schedule A be drawn up in the English language only.

### **1.9 Successors and Assigns**

All covenants and agreements of the Corporation in this Indenture and the Debentures shall bind its successors and assigns, whether so expressed or not. All covenants and agreements of the Trustee in this Indenture shall bind its successors.

### **1.10 Severability**

In case any provision in this Indenture or in the Debentures shall be invalid, illegal or unenforceable, such provision shall be deemed to be severed herefrom or therefrom and the validity, legality and enforceability of the remaining provisions shall not in any way be affected, prejudiced or impaired thereby.

### **1.11 Entire Agreement**

This Indenture and all supplemental indentures and Schedules hereto and thereto, and the Debentures issued hereunder and thereunder, together constitute the entire agreement between the parties hereto with respect to the indebtedness created hereunder and thereunder and under the Debentures and supersedes as of the date hereof all prior memoranda, agreements, negotiations, discussions and term sheets, whether oral or written, with respect to the indebtedness created hereunder or thereunder and under the Debentures.

### **1.12 Benefits of Indenture**

Nothing in this Indenture or in the Debentures, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any paying agent, the holders of Debentures, the Secured Creditors (to the extent provided in Article 5 only) and (to the extent provided in Section 8.10) the holders of Common Shares, any benefit or any legal or equitable right, remedy or claim under this Indenture.

### **1.13 Applicable Law and Attornment**

This Indenture, any supplemental indenture and the Debentures shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts, with respect to any suit, action or proceedings relating to this Indenture, any supplemental indenture or any Debenture, the Corporation, the Trustee and each holder irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## **1.14 Currency of Payment**

Unless otherwise indicated in a supplemental indenture with respect to any particular series of Debentures, all payments to be made under this Indenture or a supplemental indenture shall be made in Canadian dollars.

## **1.15 Non-Business Days**

Whenever any payment to be made hereunder shall be due, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period ending on, a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculation shall be made and such other action shall be taken, as the case may be, unless otherwise specifically provided herein, on or as of the next succeeding Business Day without any additional interest, cost or charge to the Corporation.

## **1.16 Accounting Terms**

Except as hereinafter provided or as otherwise indicated in this Indenture, all calculations required or permitted to be made hereunder pursuant to the terms of this Indenture shall be made in accordance with IFRS. For greater certainty, IFRS shall include any accounting standards that may from time to time be approved for general application by the International Accounting Standards Board.

## **1.17 Calculations**

The Corporation shall be responsible for making all calculations called for hereunder including, without limitation, calculations of Current Market Price. The Corporation shall make such calculations in good faith and, absent manifest error, the Corporation's calculations shall be final and binding on holders and the Trustee. The Corporation will provide a schedule of its calculations to the Trustee and the Trustee shall be entitled to rely conclusively on the accuracy of such calculations without independent verification.

## **1.18 Schedules**

1.18.1 The following Schedules are incorporated into and form part of this Indenture:

- Schedule A – Form of Debenture
- Schedule B – Form of Notice of Conversion

1.18.2 In the event of any inconsistency between the provisions of any Section of this Indenture and the provisions of the Schedules which form a part hereof, the provisions of this Indenture shall prevail to the extent of the inconsistency.

## **ARTICLE 2 THE DEBENTURES**

### **2.1 Limit of Debentures**

The aggregate principal amount of Debentures authorized to be issued under this Indenture is subject to the limitation in respect of the Initial Debentures set out in Section 2.4, but Debentures may be issued only upon and subject to the conditions and limitations herein set forth.

## 2.2 Terms of Debentures of any Series

2.2.1 The Debentures may be issued in one or more series. There shall be established herein or in or pursuant to one or more indentures supplemental hereto, prior to the initial issuance of Debentures of any particular series:

- (a) the designation of the Debentures of the series (which need not include the term “**Debentures**”), which shall distinguish the Debentures of the series from the Debentures of all other series;
- (b) any limit upon the aggregate principal amount of the Debentures of the series that may be certified and delivered under this Indenture (except for Debentures certified and delivered upon registration of, transfer of, amendment of, or in exchange for, or in lieu of, other Debentures of the series pursuant to Section 2.10, Section 2.11, Section 3.1, Section 3.6, Article 4 and Article 6);
- (c) the date or dates on which the principal of the Debentures of the series is payable;
- (d) the rate or rates at which the Debentures of the series shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable and on which record date, if any, shall be taken for the determination of holders to whom such interest shall be payable and/or the method or methods by which such rate or rates or date or dates shall be determined;
- (e) the place or places where the principal of and any interest on Debentures of the series shall be payable or where any Debentures of the series may be surrendered for registration of transfer or exchange;
- (f) the right, if any, of the Corporation to redeem Debentures of the series, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which, Debentures of the series may be so redeemed;
- (g) the obligation, if any, of the Corporation to redeem, purchase or repay Debentures of the series pursuant to any mandatory redemption, sinking fund or analogous provisions or at the option of a holder thereof and the price or prices at which, the period or periods within which, the date or dates on which, and any terms and conditions upon which, Debentures of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligations;
- (h) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Debentures of the series shall be issuable;
- (i) subject to the provisions of this Indenture, any trustee, Depositories, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Debentures of the series;
- (j) any other events of default or covenants with respect to the Debentures of the series;

- (k) whether and under what circumstances the Debentures of the series will be convertible into or exchangeable for securities of any Person;
- (l) the form and terms of the Debentures of the series;
- (m) if applicable, that the Debentures of the series shall be issuable in certificated or uncertificated form;
- (n) if other than Canadian currency, the currency in which the Debentures of the series are issuable; and
- (o) any other terms of the Debentures of the series (which terms shall not be inconsistent with the provisions of this Indenture).

2.2.2 All Debentures of any one series shall be substantially identical, except as may otherwise be established herein or in an indenture supplemental hereto. All Debentures of any one series need not be issued at the same time and may be issued from time to time, including pursuant to a Periodic Offering, consistent with the terms of this Indenture, if so provided herein, or in an indenture supplemental hereto.

### **2.3 Form of Debentures**

Except in respect of the Initial Debentures, the form of which is provided for herein, the Debentures of each series shall be substantially in such form or forms (not inconsistent with this Indenture) as shall be established herein or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or an indenture supplemental hereto, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture or an indenture supplemental hereto, as may be required to comply with any law or with any rules or regulations pursuant thereto or with any rules or regulations of any securities exchange or securities regulatory authority or to conform to general usage, all as may be determined by the directors or officers of the Corporation executing such Debentures on behalf of the Corporation, as conclusively evidenced by their execution of such Debentures.

### **2.4 Form and Terms of Initial Debentures**

2.4.1 The first series of Debentures (the “**Initial Debentures**”) authorized for issue immediately is limited to an aggregate principal amount of up to \$12,362,000 (assuming the Agents’ Option is exercised in full and including the Debentures issuable to the Agents in respect of the corporate finance fee payable by the Corporation to the Agents pursuant to the Agency Agreement) and shall be designated as “10.0% Unsecured Convertible Debentures”.

2.4.2 The Initial Debentures shall be dated as of the date of closing of the Offering and shall mature on December 23, 2024 (the “**Maturity Date**” for the Initial Debentures).

2.4.3 The Initial Debentures shall bear interest from the date of issue at the rate of 10.0% per annum (based on a year of 360 days comprised of twelve 30-day months), payable in equal quarterly payments in arrears on the last day of each of March, June, September and December (with the exception of the first interest payment, which will bear interest

from and including the date of closing of the Offering as set forth below), the first such payment to fall due on December 31, 2021 and the last such payment (representing interest payable from and including the last Interest Payment Date to, but excluding, the Maturity Date of the Initial Debentures) to fall due on December 23, 2024 payable after as well as before maturity and after as well as before default, with interest on amounts in default at the same rate, compounded quarterly. For certainty, the first interest payment will include interest accrued from and including the date of closing of the Offering to, but excluding, December 31, 2021, which will be equal to \$2.22 for each \$1,000 principal amount of Initial Debentures. Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day. The record date for the payment of interest on the Initial Debentures will be three Business Days prior to December 31, 2021 with respect to the first payment of interest on December 31, 2021 and thereafter shall be that date which is five Business Days prior to each Interest Payment Date.

- 2.4.4 The Initial Debentures will be subordinated to all existing and future Secured Indebtedness of the Corporation in accordance with the provisions of Article 5. The Initial Debentures will rank *pari passu* in right of payment of principal and interest with each other series of Debentures issued under this Indenture or under indentures supplemental to this Indenture (regardless of their actual date or terms of issue) and, except as prescribed by law, with all other existing and future unsecured indebtedness of the Corporation, other than Secured Indebtedness.
- 2.4.5 The Initial Debentures will be redeemable in accordance with the terms of Article 4 provided that the Initial Debentures will not be redeemable before December 23, 2022, except in the event of the satisfaction of certain conditions after a Change of Control has occurred as provided herein. On and after December 23, 2022 and at any time prior to the Maturity Date, the Initial Debentures may be redeemed at the option of the Corporation in whole or in part from time to time on notice as provided for in 4.3 at the applicable Redemption Price.
- 2.4.6 Upon and subject to the provisions and conditions of Article 4 and Section 3.7, the holder of each Initial Debenture shall have the right at such holder's option, at any time prior to 5:00 pm (Eastern Time) on the earliest of (i) the Business Day immediately preceding the Maturity Date of the Initial Debentures; or (ii) if subject to redemption or repurchase pursuant to a Change of Control, on the Business Day immediately preceding the Redemption Date or the Change of Control Purchase Date, as applicable, subject to the satisfaction of certain conditions, by notice to the holders of Initial Debentures in accordance with Section 2.4.11 and 4.3 (the earlier of which will be the "**Time of Expiry**" for the purposes of Article 6 in respect of the Initial Debentures), to convert any part, being \$1,000 or an integral multiple thereof, of the principal amount of a Debenture into Common Shares at the Conversion Price in effect on the Date of Conversion. To the extent a redemption is a redemption in part only of the Initial Debentures, such right to convert, if not exercised prior to the applicable Time of Expiry, shall survive as to any Initial Debentures not redeemed or converted and be applicable to the next succeeding Time of Expiry.
- 2.4.7 The Conversion Price in effect on the date hereof for each Common Share to be issued upon the conversion of Initial Debentures shall be equal to \$0.60 such that 1,667 Common Shares shall be issued for each \$1,000 principal amount of Initial Debentures so converted. Except as provided below, no adjustment in the number of Common Shares to

be issued upon conversion will be made for dividends or distributions on Common Shares issuable upon conversion, the record date for the payment of which precedes the date upon which the holder becomes a holder of Common Shares in accordance with Article 6, or for interest accrued on Initial Debentures surrendered. No fractional Common Shares will be issued, and the number of Common Shares so issuable will be rounded down to the nearest whole number. The Conversion Price applicable to, and the Common Shares, securities or other property receivable on the conversion of, the Initial Debentures is subject to adjustment pursuant to the provisions of Section 6.3. Holders converting their Initial Debentures will receive, in addition to the applicable number of Common Shares, accrued and unpaid interest (less any taxes required to be deducted) in respect of the Initial Debentures surrendered for conversion up to but excluding the Date of Conversion from, and including, the most recent Interest Payment Date. The Conversion Price will not be adjusted for accrued interest.

- 2.4.8 Notwithstanding any other provisions of this Indenture, if a Debenture is surrendered for conversion on an Interest Payment Date or during the five preceding Business Days, the Person or Persons entitled to receive Common Shares in respect of the Debenture so surrendered for conversion shall not become the holder or holders of record of such Common Shares until the Business Day following such Interest Payment Date and, for clarity, any interest payable on such Debentures will be for the account of the holder of record of such Debentures at the close of business on the relevant record date.
- 2.4.9 The Initial Debentures shall be issued in denominations of \$1,000 and integral multiples of \$1,000. Each Initial Debenture and the certificate of the Trustee endorsed thereon shall be issued in substantially the form set out in Schedule A, with such insertions, omissions, substitutions or other variations as shall be required or permitted by this Indenture, and may have imprinted or otherwise reproduced thereon such legend or legends or endorsements, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto or with any rules or regulations of any securities exchange or securities regulatory authority or to conform with general usage. Each Initial Debenture shall additionally bear such distinguishing letters and numbers as the Trustee shall approve. Notwithstanding the foregoing, an Initial Debenture may be in such other form or forms as may, from time to time, be approved by a resolution of the Board of Directors, or as specified in an Officer's Certificate. The Initial Debentures may be engraved, lithographed, printed, mimeographed or typewritten or partly in one form and partly in another.
- 2.4.10 The Debentures may be issued in the form of one or more Debenture Certificates or Global Debentures, substantially in the form set out in Schedule A hereto or as Uncertificated Debentures. Global Debentures will be registered in the name of the Depository, which, as of the date hereof, shall be CDS (or any nominee of the Depository) and, if applicable, be designated by a CUSIP number. No Beneficial Holder will receive definitive certificates representing its interest in Global Debentures except as provided in Section 3.2. A Global Debenture may be exchanged for Debentures in registered form that are not Global Debentures, or transferred to and registered in the name of a Person other than the Depository for such Global Debentures or a nominee thereof as provided in Section 3.2.
- 2.4.11 Within 30 days following a Change of Control, and subject to the provisions and conditions of this Section 2.4.11, the Corporation shall be obligated to offer to purchase all of the Initial Debentures then outstanding, subject to the exercise of conversion rights of holders

in accordance with Section 2.4.6 and Article 6 (the “**Change of Control Purchase Offer**”). The terms and conditions of such obligation are set forth below:

- (a) Not more than 30 days following the occurrence of a Change of Control, the Corporation shall deliver to the Trustee, and the Trustee shall promptly deliver to the holders of the Initial Debentures, a notice stating that there has been a Change of Control and specifying the date on which such Change of Control occurred and the circumstances or events giving rise to such Change of Control (a “**Change of Control Notice**”). Prior to the Change of Control Purchase Date (as defined below), the Debentureholders shall, in their sole discretion, have the right to require the Corporation to purchase the Debentures (the “**Change of Control Purchase Option**”) for an amount equal to 105% of the principal amount thereof plus unpaid interest to, but excluding, the Change of Control Purchase Date (the “**Change of Control Purchase Price**”). The “**Change of Control Purchase Date**” shall be the date that is 30 Business Days after the date of the Change of Control Notice is delivered to holders of Initial Debentures.
- (b) If 90% or more in aggregate principal amount of Initial Debentures outstanding on the date the Corporation provides the Change of Control Notice to holders of the Initial Debentures have been surrendered for purchase pursuant to the Change of Control Purchase Option on the expiration thereof, the Corporation has the right, upon written notice provided to the Trustee within 10 days following the expiration of the Change of Control Purchase Option, to redeem all the Initial Debentures remaining outstanding on the expiration of the Change of Control Purchase Option at the Change of Control Purchase Price as at the Change of Control Purchase Date (the “**90% Redemption Right**”).
- (c) Upon receipt of notice that the Corporation has exercised or is exercising the 90% Redemption Right and is acquiring the remaining Initial Debentures, the Corporation shall cause the Trustee to promptly provide written notice (in a form provided by the Corporation) to each Debentureholder that did not previously accept the Change of Control Purchase Option that:
  - (i) the Corporation has exercised the 90% Redemption Right and is purchasing all outstanding Initial Debentures effective on the expiry of the Change of Control Purchase Option at the Change of Control Purchase Price, and shall include a calculation of the amount payable to such holder as payment of the Change of Control Purchase Price as at the Change of Control Purchase Date;
  - (ii) each such holder must transfer their Initial Debentures to the Corporation on the same terms as those holders that accepted the Change of Control Purchase Option and must send their respective Initial Debentures, duly endorsed for transfer, to the Trustee within 10 Business Days after the sending of such notice; and
  - (iii) the rights of such holder under the terms of the Initial Debentures and this Indenture cease effective as of the date of expiry of the Change of Control Purchase Option provided the Corporation has, on or before the time of notifying the Trustee of the exercise of the 90% Redemption Right, paid the aggregate Change of Control Purchase Price to, or to the order of, the

Trustee and thereafter the Initial Debentures shall not be considered to be outstanding and the holder shall not have any right except to receive such holder's Change of Control Purchase Price upon surrender and delivery of such holder's Initial Debentures in accordance with this Indenture.

- (d) The Corporation shall, on or before 2:00 p.m. (Eastern Standard Time) on the Business Day immediately prior to the Change of Control Purchase Date, deposit with the Trustee or any paying agent to the order of the Trustee, such sums of money as may be sufficient to pay the aggregate Change of Control Purchase Price of the Initial Debentures to be purchased or redeemed by the Corporation on the Change of Control Purchase Date (less any tax required by law to be deducted in respect of accrued and unpaid interest), provided the Corporation may elect to satisfy this requirement by providing the Trustee with a certified cheque for such amounts required under this Section 2.4.11(d) post-dated to the date of expiry of the Change of Control Purchase Option. The Corporation shall also deposit with the Trustee a sum of money sufficient to pay any reasonable charges or expenses which may be incurred by the Trustee in connection with such purchase. Every such deposit shall be irrevocable. From the sums so deposited, the Trustee shall pay or cause to be paid to the holders of such Initial Debentures, the Change of Control Purchase Price to which they are entitled (less any tax required by law to be deducted in respect of accrued and unpaid interest) on the Corporation's purchase.
- (e) In the event that one or more of such Initial Debentures being purchased in accordance with this Section 2.4.11 becomes subject to purchase in part only, upon surrender of such Initial Debentures for payment of the Change of Control Purchase Price, the Corporation shall execute and the Trustee shall certify or Authenticate, as applicable, and deliver without charge to the holder thereof or upon the holder's order, one or more new Initial Debentures for the portion of the principal amount of the Initial Debentures not purchased.
- (f) Initial Debentures for which holders have accepted the Change of Control Purchase Option and Initial Debentures which the Corporation has elected to redeem in accordance with this Section 2.4.11 shall become due and payable at the Change of Control Purchase Price on the Change of Control Purchase Date, in the same manner and with the same effect as if it were the date of maturity specified in such Initial Debentures, anything therein or herein to the contrary notwithstanding, and, from and after the Change of Control Purchase Date, if the money necessary to purchase or redeem the Initial Debentures shall have been deposited as provided in this Section 2.4.11 and affidavits or other proofs satisfactory to the Trustee as to the publication and/or mailing of such notices shall have been lodged with it, interest on the Initial Debentures shall cease. If any question shall arise as to whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.
- (g) In case the holder of any Initial Debenture to be purchased or redeemed in accordance with this Section 2.4.11 shall fail on or before the Change of Control Purchase Date to so surrender such holder's Initial Debenture or shall not within such time accept payment of the monies payable, or give such receipt therefor, if any, as the Trustee may require, such monies may be set aside in trust, without

interest, either in the deposit department of the Trustee or in a chartered bank, and such setting aside shall for all purposes be deemed a payment to the Debentureholder of the sum so set aside and the Debentureholder shall have no other right except to receive payment of the monies so paid and deposited upon surrender and delivery of such holder's Initial Debenture. In the event that any money required to be deposited hereunder with the Trustee or any depository or paying agent on account of principal, premium, if any, or interest, if any, on Initial Debentures issued hereunder shall remain so deposited for a period of six years from the Change of Control Purchase Date, then such monies or any distributions paid thereon, shall at the end of such period, upon the Written Direction of the Corporation, be paid over or delivered over by the Trustee or such depository or paying agent to the Corporation and the Trustee shall not be responsible to Debentureholders for any amounts owing to them.

- (h) Subject to the provisions above related to Initial Debentures purchased in part, all Initial Debentures redeemed and paid under this Section 2.4.11 shall forthwith be delivered to the Trustee and cancelled and no Initial Debentures shall be issued in substitution therefor.
- (i) The Trustee will be provided with the documents and instruments referred to in Subsections 2.6(b), 2.6(c) and 2.6(d), with respect to the Initial Debentures prior to the issuance of the Initial Debentures.

## **2.5 Issue of Global Debenture and Legends on Debentures**

- 2.5.1 The Corporation may specify that the Debentures of a series are to be issued in whole or in part as one or more Global Debentures, that may or may not be book based only Debentures, registered in the name of a Depository, or its nominee, designated by the Corporation in the Written Direction of the Corporation delivered to the Trustee at the time of issue of such Debentures, and in such event the Corporation shall execute and the Trustee shall certify or Authenticate, as applicable, and deliver one or more Global Debentures which, if applicable, shall be designated by CUSIP number, and that shall:
  - (a) represent an aggregate amount equal to the principal amount of the outstanding Debentures to be represented by one or more Global Debentures; and
  - (b) be delivered to such Depository or pursuant to such Depository's instructions.
- 2.5.2 Each Depository designated for a Global Debenture must, at the time of its designation and at all times while it serves as such Depository, be a clearing agency registered or designated under the securities legislation of the jurisdiction where the Depository has its principal offices.
- 2.5.3 Global Debentures shall bear or be deemed to bear a legend substantially to the following effect, or as may otherwise be required by the Depository:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO PROPHECY DEFI INC. (THE "ISSUER") OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY

CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.

- 2.5.4 Unless otherwise provided in the Debentures of any series, Debentures will not be registered under any United States federal or state securities laws, and Debentures of any series issued and sold in the United States or to, or for the account of benefit of, U.S. Persons (as such term is defined by the U.S. Securities Act) will be issued and sold in reliance on Rule 506 of Regulation D only to Persons who are “institutional accredited investors” that meet the requirements set forth in Rule 501(a)(1), (2), (3), (7), (9) or (12) and all Debentures issued in exchange for or in substitution of the foregoing securities, and shall bear, unless otherwise directed by the Corporation, the following legend (the **“144A U.S. Legend”**):

“THE DEBENTURES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF PROPHECY DEFI INC. (THE “ISSUER”) THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE ISSUER, (B) INSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”) TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A) THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE OFFER, SALE OR TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, OR (E) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION AFTER IN THE CASE OF TRANSFERS PURSUANT TO CLAUSE (D) OR (E), AN OPINION OF COUNSEL OF RECOGNIZED STANDING OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE ISSUER HAS BEEN FURNISHED TO THE ISSUER.

IF THESE SECURITIES ARE BEING SOLD IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, A NEW CERTIFICATE BEARING NO LEGEND MAY BE OBTAINED FROM TSX TRUST COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION (AND, IF REQUIRED BY THE ISSUER, AN OPINION OF COUNSEL), IN A FORM SATISFACTORY TO THE ISSUER, TO THE EFFECT THAT THE SALE OF THE DEBENTURES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT.”

- 2.5.5 The Debentures and the Common Shares issuable upon conversion thereof will also bear the Canadian private placement legend until such legend is no longer required under Applicable Securities Legislation. In addition, the Debentures have not been and will not be qualified for sale to the public under Applicable Securities Legislation. The Debentures, and each Debenture issued in exchange therefor or in substitution thereof, and the Common Shares issuable upon conversion thereof, will bear a legend in substantially the following form until the legend is no longer required under Applicable Securities Legislation:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY BEFORE [THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE DISTRIBUTION DATE]”

- 2.5.6 Prior to the issuance of Debentures of any series, the Corporation shall notify the Trustee, in writing, concerning which Debentures are to be certificated and are to bear the legend or legends described in this Section 2.5.

## **2.6 Certification and Delivery of Additional Debentures**

The Corporation may from time to time request the Trustee to certify or Authenticate, as applicable, and deliver Additional Debentures of any series by delivering to the Trustee the documents referred to below in this Section 2.6 whereupon the Trustee shall certify or Authenticate, as applicable, such Debentures and cause the same to be delivered in accordance with the Written Direction of the Corporation referred to below or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by a Written Direction of the Corporation. The maturity date, issue date, interest rate (if any) and any other terms of the Debentures of such series shall be set forth in or determined by or pursuant to such Written Direction of the Corporation and procedures. In certifying or Authenticating, as applicable, such Debentures, the Trustee shall be entitled to receive and shall be fully protected in relying upon, unless and until such documents have been superseded or revoked:

- (a) an Officer’s Certificate and/or executed supplemental indenture by or pursuant to which the form and terms of such Additional Debentures were established;
- (b) a Written Direction of the Corporation requesting certification and delivery of such Additional Debentures and setting forth delivery instructions, provided that, with respect to Debentures of a series subject to a Periodic Offering:

- (i) such Written Direction of the Corporation may be delivered by the Corporation to the Trustee prior to the delivery to the Trustee of such Additional Debentures of such series for certification and delivery;
  - (ii) the Trustee shall certify or Authenticate, as applicable, and deliver Additional Debentures of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Written Direction of the Corporation or pursuant to procedures acceptable to the Trustee as may be specified from time to time by a Written Direction of the Corporation; and
  - (iii) the maturity date or dates, issue date or dates, interest rate or rates (if any) and any other terms of Additional Debentures of such series shall be determined by an executed supplemental indenture and by Written Direction of the Corporation or pursuant to such procedures;
- (c) an opinion of Counsel, in form and substance satisfactory to the Trustee, acting reasonably, to the effect that all requirements imposed by this Indenture and by law in connection with the proposed issue of Additional Debentures have been complied with, subject to the delivery of certain documents or instruments specified in such opinion; and
- (d) an Officer's Certificate certifying that the Corporation is not in default under this Indenture, that the terms and conditions for the certification and delivery of Additional Debentures (including those set forth in Section 14.4), have been complied with subject to the delivery of any documents or instruments specified in such Officer's Certificate and that no Event of Default exists or will exist upon such certification and delivery.

## **2.7 Non-Certificated Deposit**

- 2.7.1 Subject to the provisions hereof, at the Corporation's option, Debentures may be issued and registered in the name of CDS or its nominee and:
- (a) the deposit of which may be confirmed electronically by the Trustee to a particular Participant through CDS; and
  - (b) shall be identified by a specific CUSIP/ISIN as requested by the Corporation from CDS to identify each specific series of Debentures and the Initial Debentures shall be identified by either CUSIP – 74349RAA3 or ISIN – CA74349RAA38.
- 2.7.2 If the Corporation issues Debentures in a non-certificated format, Beneficial Holders of such Debentures registered and deposited with CDS shall not receive Debenture Certificates in definitive form and shall not be considered owners or holders thereof under this Indenture or any supplemental indenture. Beneficial interests in Debentures registered and deposited with CDS will be represented only through the non-certificated inventory system administered by CDS. Transfers of Debentures registered and deposited with CDS between Participants shall occur in accordance with the rules and procedures of CDS. Neither the Corporation nor the Trustee shall have any responsibility or liability for any aspects of the records relating to or payments made by CDS or its nominee, on

account of the beneficial interests in Debentures registered and deposited with CDS. Nothing herein shall prevent the Beneficial Holders of Debentures registered and deposited with CDS from voting such Debentures using duly executed proxies or voting instruction forms.

- 2.7.3 All references herein to actions by, notices given or payments made to, Debentures shall, where Debentures are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the Participants in accordance with its rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or the direction of Debentureholders evidencing a specified percentage of the aggregate Debentures outstanding, such direction or consent may be given by Beneficial Holders acting through CDS and the Participants owning Debentures evidencing the requisite percentage of the Debentures. The rights of a Beneficial Holder whose Debentures are held established by law and agreements between such holders and CDS and the Participants upon instructions from the Participants. Each of the Trustee and the Corporation may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Debentures and such dealing with CDS shall constitute satisfaction or performance, as applicable, of their respective obligations hereunder.
- 2.7.4 For so long as Debentures are held through CDS, if any notice or other communication is required to be given to Debentureholders, the Trustee will give such notices and communications to CDS.
- 2.7.5 If CDS resigns or is removed from its responsibility as Depository and the Corporation is unable or does not wish to locate a qualified successor, CDS shall provide the Trustee with instructions for registration of Debentures in the names and in the amounts specified by CDS, and the Corporation shall issue and the Trustee shall certify or Authenticate, as applicable, and deliver the aggregate number of Debentures then outstanding in the form of definitive Debentures Certificates representing such Debentures.
- 2.7.6 The rights of Beneficial Holders who hold securities entitlements in respect of the Debentures through non-certificated inventory system administered by CDS shall be limited to those established by applicable law and agreements between the Depository and the Participants and between such Participants and the Beneficial Holders who hold securities entitlements in respect of the Debentures through the non-certificated inventory system administered by CDS, and such rights must be exercised through a Participant in accordance with the rules and procedures of the Depository.
- 2.7.7 Notwithstanding anything herein to the contrary, none of the Corporation or the Trustee or any agent thereof shall have any responsibility or liability for:
- (a) the electronic records maintained by the Depository relating to any ownership interests or other interests in the Debentures or the depository system maintained by the Depository, or payments made on account of any ownership interest or any other interest of any Person in any Debenture represented by an electronic position in the non-certificated inventory system administered by CDS (other than Depository or its nominee);
  - (b) for maintaining, supervising or reviewing any records of the Depository or any Participant relating to any such interest; or

- (c) any advice or representation made or given by the Depository or those contained herein that relate to the rules and regulations of the Depository or any action to be taken by the Depository on its own direction or at the direction of any Participant.

2.7.8 The Corporation may terminate the application of this Section 2.7 in its sole discretion in which case all Debentures shall be evidenced by Debenture Certificates registered in the name of the Persons who beneficially own such Debentures and the Corporation shall deliver or cause to be delivered such Debenture Certificates to such Persons.

## **2.8 Execution of Debentures**

All Debentures shall be signed (either manually or by facsimile or other electronic signature) by any one authorized director or officer of the Corporation holding office at the time of signing. A facsimile or electronic signature upon a Debenture shall for all purposes of this Indenture be deemed to be the signature of the Person whose signature it purports to be. Notwithstanding that any Person whose signature, either manual or in facsimile or electronic form, appears on a Debenture as a director or officer may no longer hold such office at the date of the Debenture or at the date of the certification and delivery thereof, such Debenture shall be valid and binding upon the Corporation and entitled to the benefits of this Indenture.

## **2.9 Certification**

2.9.1 No Debenture shall be issued or, if issued, shall be obligatory or shall entitle the holder to the benefits of this Indenture, until it has been certified or Authenticated, as applicable, by or on behalf of the Trustee substantially in the form set out in this Indenture, in the relevant supplemental indenture, or in some other form approved by the Trustee. Such certification or authentication of any Debenture shall be conclusive evidence that such Debenture is duly issued, is a valid obligation of the Corporation and the holder is entitled to the benefits hereof.

2.9.2 The certificate of the Trustee signed on the Debentures, or interim Debentures hereinafter mentioned, and the Authentication of Uncertificated Debentures, shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of the Debentures or interim Debentures or as to the issuance of the Debentures or interim Debentures and the Trustee shall in no respect be liable or answerable for the use made of the Debentures or interim Debentures or any of them or the proceeds thereof. The certificate of the Trustee on the Debentures or interim Debentures, and the authentication of Uncertificated Debentures shall, however, be a representation and warranty by the Trustee that the Debentures or interim Debentures have been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

2.9.3 The Trustee Authenticates Uncertificated Debentures (whether upon original issuance, exchange, registration of transfer or otherwise) by completing its Internal Procedures and the Corporation shall, and hereby acknowledges that it shall, thereupon be deemed to have duly and validly issued such Uncertificated Debentures hereunder and that the holder or holders are entitled to the benefits of this Indenture. The register shall be final and conclusive evidence as to all matters relating to Uncertificated Debentures with respect to which this Indenture requires the Trustee to maintain records or accounts. In case of differences between the register at any time and any other time the register at the later time shall be controlling, absent manifest error and such Uncertificated Debentures are binding on the Corporation.

## **2.10 Interim Debentures or Certificates**

Pending the delivery of definitive Debentures of any series to the Trustee, the Corporation may issue and the Trustee certify or Authenticate, as applicable, in lieu thereof interim Debentures in such forms and in such denominations and signed in such manner as provided herein, entitling the holders thereof to definitive Debentures of the series when the same are ready for delivery; or the Corporation may execute and the Trustee certify or Authenticate, as applicable, a temporary Debenture for the whole principal amount of Debentures of the series then authorized to be issued hereunder and deliver the same to the Trustee and thereupon the Trustee may issue its own interim certificates in such form and in such amounts, not exceeding in the aggregate the principal amount of the temporary Debenture so delivered to it, as the Corporation and the Trustee may approve entitling the holders thereof to definitive Debentures of the series when the same are ready for delivery; and, when so issued and certified, such interim or temporary Debentures or interim certificates shall, for all purposes but without duplication, rank in respect of this Indenture equally with Debentures duly issued hereunder and, pending the exchange thereof for definitive Debentures, the holders of the interim or temporary Debentures or interim certificates shall be deemed without duplication to be Debentureholders and entitled to the benefit of this Indenture to the same extent and in the same manner as though the said exchange had actually been made. Forthwith after the Corporation shall have delivered the definitive Debentures to the Trustee, the Trustee shall cancel such temporary Debentures, if any, and shall call in for exchange all interim Debentures or certificates that shall have been issued and forthwith after such exchange shall cancel the same. No charge shall be made by the Corporation or the Trustee to the holders of such interim or temporary Debentures or interim certificates for the exchange thereof. All interest paid upon interim or temporary Debentures or interim certificates shall be noted thereon as a condition precedent to such payment unless paid by cheque to the registered holders thereof.

## **2.11 Mutilation, Loss, Theft or Destruction**

In case any Debenture Certificate issued hereunder shall become mutilated or be lost, stolen or destroyed, the Corporation shall issue, and thereupon the Trustee shall certify and deliver, a new Debenture Certificate upon surrender and cancellation of the mutilated Debenture Certificate, or in the case of a lost, stolen or destroyed Debenture Certificate, in lieu of and in substitution for the same, and the substituted Debenture Certificate shall be in a form approved by the Trustee and shall be entitled to the benefits of this Indenture and rank equally in accordance with its terms with all other Debentures issued or to be issued hereunder. In case of loss, theft or destruction, the applicant for a substituted Debenture Certificate shall furnish to the Corporation and to the Trustee such evidence of the loss, theft or destruction of the Debenture Certificate as shall be satisfactory to them in their discretion, acting reasonably, and shall also furnish an indemnity and surety bond satisfactory to them in their discretion, acting reasonably. The applicant shall pay all reasonable expenses incidental to the issuance of any substituted Debenture Certificate.

## **2.12 Concerning Interest**

2.12.1 All Debentures issued hereunder, whether originally or upon exchange or in substitution for previously issued Debentures which are interest bearing, shall bear interest (i) from and including their issue date, or (ii) from and including the last Interest Payment Date to which interest shall have been paid or made available for payment on the outstanding Debentures of that series, whichever shall be the later, or, in respect of Debentures subject to a Periodic Offering, from and including their issue date or from and including the last Interest Payment Date to which interest shall have been paid or made available for

payment on such Debentures, in all cases, to but excluding the next Interest Payment Date.

2.12.2 Unless otherwise specifically provided in the terms of the Debentures of any series, interest shall be computed on the basis of a year of 360 days composed of twelve 30- day months. With respect to any series of Debentures, whenever interest is computed on the basis of a year (the “**deemed year**”) which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

### **2.13 Ranking of Debentures**

The Debentures will be direct unsecured obligations of the Corporation. Each Debenture of the same series of Debentures will rank *pari passu* with each other Debenture of the same series (regardless of their actual date or terms of issue) and, subject to statutory preferred exceptions, with all other previously existing and future unsecured indebtedness of the Corporation.

### **2.14 Payments of Amounts Due on Maturity**

Except as may otherwise be provided herein or in any supplemental indenture in respect of any series of Debentures, payments of amounts due upon maturity of the Debentures will be made in the following manner. The Corporation will establish and maintain with the Trustee a Maturity Account for each series of Debentures. Each such Maturity Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. On or before 11:00 a.m. (Eastern Time) not less than three Business Days immediately prior to each Maturity Date for Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer for deposit in the applicable Maturity Account in an amount sufficient to pay the cash amount payable in respect of such Debentures (including the principal amount together with any accrued and unpaid interest thereon less any tax required by law to be deducted). The Trustee, on behalf of the Corporation, will pay to each holder entitled to receive payment the principal amount of and premium (if any) and accrued and unpaid interest on the Debenture, upon surrender of the Debenture at any branch of the Trustee designated for such purpose from time to time by the Corporation and the Trustee, subject to the prior consent of the Trustee. The delivery of such funds to the Trustee for deposit to the applicable Maturity Account will satisfy and discharge the liability of the Corporation for the Debentures to which the delivery of funds relates to the extent of the amount delivered (plus the amount of any tax deducted as aforesaid) and such Debentures will thereafter to that extent not be considered as outstanding under this Indenture and such holder will have no other right in regard thereto other than to receive out of the money so delivered or made available the amount to which it is entitled. Interest shall cease to accrue on the Debentures upon the Maturity Date provided the Trustee has received, by the Maturity Date, from the Corporation all the funds due and payable on the Debentures.

### **2.15 Payment of Interest**

The following provisions shall apply to Debentures, except as otherwise provided in Section 2.4.3 or: (i) with respect to minor administrative matters or typographical errors, as specified in a resolution of the Board of Directors, an Officer’s Certificate, or (ii) as otherwise specified in a supplemental indenture relating to a particular series of Additional Debentures:

- (a) As interest becomes due on each Debenture (except, subject to certain exceptions set forth herein including in Section 2.4.3, on conversion or on redemption, when interest may at the option of the Corporation be paid upon surrender of such Debenture), the Corporation, either directly or through the Trustee or any agent of the Trustee, shall send or forward by prepaid ordinary mail, electronic transfer of funds or such other means as may be agreed to by the Trustee, payment of such interest (less any tax required by law to be deducted or withheld therefrom) to the order of the registered holder of such Debenture appearing on the registers maintained by the Trustee at the close of business on the record date prior to the applicable Interest Payment Date and addressed to the holder at the holder's last address appearing on the register. If payment is made by cheque, such cheque shall be forwarded one Business Day prior to the Interest Payment Date, and if payment is made by other means (such as electronic transfer of funds), the Trustee must receive confirmation of receipt of funds prior to being able to forward funds or cheques to holders and such payment shall be made in a manner whereby the holder receives credit for such payment on the date such interest on such Debenture becomes due. For greater certainty, the Corporation shall on or before 11:00 am (Eastern Time) not less than three Business Days immediately prior to each interest Payment Date deliver to the Trustee by a certified cheque or wire transfer in immediately available funds an amount sufficient to pay the interest payable on the Debentures. The mailing of such cheque or the making of such payment by other means shall, to the extent of the sum represented thereby, plus the amount of any tax withheld as aforesaid, satisfy and discharge all liability for interest on such Debenture, unless in the case of payment by cheque, such cheque is not paid at par on presentation. In the event of non-receipt of any cheque for or other payment of interest by the Person to whom it is so sent as aforesaid, the Corporation, or the Trustee on its behalf, will issue to such Person a replacement cheque or other payment for a like amount upon being furnished with such evidence of non-receipt as they both may reasonably require and upon being indemnified to their satisfaction. Notwithstanding the foregoing, if the Corporation is prevented by circumstances beyond its control (including, without limitation, any interruption in mail service) from making payment of any interest due on each Debenture in the manner provided above, the Corporation may make payment of such interest or make such interest available for payment in any other manner acceptable to the Trustee with the same effect as though payment had been made in the manner provided above.
- (b) Notwithstanding Section 2.15(a), if the Debentures are represented by a Global Debenture or otherwise registered in the name of CDS or its nominee, then all payments of interest on such Global Debentures shall be made on such Interest Payment Date by wire transfer made payable to the Depository or its nominee for subsequent payment to Beneficial Holders of interests in the applicable Global Debenture, unless the Corporation and the Depository otherwise agree. If the Corporation wishes to have the Trustee act as interest paying agent, funds must be delivered to the Trustee no later than three Business Days prior to the day interest is payable to the Depository. None of the Corporation, the Trustee or any agent of the Trustee for any Debenture issued as a Global Debenture will be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Debenture or for maintaining, reviewing, or supervising any records relating to such beneficial interests.

**ARTICLE 3**  
**REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP**

**3.1 Fully Registered Debentures**

- 3.1.1 With respect to each series of Debentures issuable as Fully Registered Debentures, the Corporation shall cause to be kept by and at the principal office of the Trustee in Toronto, Ontario and by the Trustee or such other registrar as the Corporation, with the approval of the Trustee, may appoint at such other place or places, if any, as may be specified in the Debentures of such series or as the Corporation may designate with the approval of the Trustee, a register in which shall be entered the names and addresses of the holders of Fully Registered Debentures and particulars of the Debentures held by them respectively and of all transfers of Fully Registered Debentures. Such registration shall be noted on the Debenture register by the Trustee or other registrar unless a new Debenture shall be issued upon such transfer.
- 3.1.2 No transfer of a Fully Registered Debenture shall be valid unless made on such register referred to in Section 3.1.1 by the registered holder or such holder's executors, administrators or other legal representatives or an attorney duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Trustee, acting reasonably, or other registrar upon surrender of the Debentures together with a duly executed form of transfer acceptable to the Trustee upon compliance with such other reasonable requirements as the Trustee or other registrar may prescribe, or unless the name of the transferee shall have been noted on the Debenture by the Trustee or other registrar.

**3.2 Global Debentures**

- 3.2.1 With respect to the Debentures issuable in whole or in part as one or more Global Debentures, the Corporation shall cause to be kept by and at the offices of the Trustee in Toronto, Ontario and by the Trustee or such other registrar as the Corporation, with the approval of the Trustee, may appoint at such other place or places, if any, as the Corporation may designate with the approval of the Trustee, a register in which shall be entered the name and address of the holder of each such Global Debenture (being the Depository, or its nominee, for such Global Debenture) as holder thereof and particulars of the Global Debenture held by it, and of all transfers thereof. If the Debentures are at any time not Global Debentures, the provisions of Section 3.1 shall govern with respect to registrations and transfers of such Debentures.
- 3.2.2 Notwithstanding any other provision of this Indenture, a Global Debenture may not be transferred by the registered holder thereof and accordingly, no definitive certificates shall be issued to Beneficial Holders of Debentures, except in the following circumstances or as otherwise specified in a resolution of the Board of Directors, an Officer's Certificate or supplemental indenture relating to the Debentures.
- 3.2.3 Global Debentures may be transferred by a Depository to a nominee of such Depository or by a nominee of a Depository to such Depository or to another nominee of such Depository or by a Depository or its nominee to a successor Depository or its nominee.
- 3.2.4 Global Debentures may be transferred (i) at any time after the Depository for such Global Debentures has notified the Corporation that it is unwilling or unable to continue as

Depository in connection with Global Debentures, or (ii) if at any time the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a Depository under Section 2.5.2 and the Corporation has not appointed a qualified successor Depository for such Global Debentures.

- 3.2.5 Global Debentures may be transferred at any time after the Corporation has determined, in its sole discretion, to terminate the book-based system in respect of such Global Debentures and has communicated such determination to the Trustee in writing.
- 3.2.6 Global Debentures may be transferred at any time after an Event of Default has occurred and is continuing with respect to the Debentures of the series issued as a Global Debenture, provided that Beneficial Holders of the Debentures representing, in the aggregate, not less than 25% of the aggregate principal amount of the Debentures of such series advise the Depository in writing, through the Depository Participants, that the continuation of the book-based system for such series of Debentures is no longer in their best interest and also provided that at the time of such transfer the Trustee has not waived the Event of Default pursuant to Section 8.3.
- 3.2.7 Global Debentures may be transferred if required by applicable law.
- 3.2.8 Global Debentures may be transferred if the book-based system ceases to exist.
- 3.2.9 With respect to the Global Debentures, unless and until definitive certificates have been issued to Beneficial Holders pursuant to Section 3.2.2:
  - (a) the Corporation and the Trustee may deal with the Depository for all purposes (including paying interest on the Debentures) as the sole holder of the Debentures and the authorized representative of the Beneficial Holders;
  - (b) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by applicable law and agreements between such Beneficial Holders and the Depository or the Participants;
  - (c) the Depository will make book-based transfers among the Participants; and
  - (d) whenever this Indenture requires or permits actions to be taken based upon instructions or directions of Debentureholders evidencing a specified percentage of the outstanding Debentures, the Depository shall be deemed to be counted in that percentage only to the extent that it has received instructions to such effect from the Beneficial Holders or the Depository Participant, and has delivered such instructions to the Trustee.
- 3.2.10 Whenever a notice or other communication is required to be provided to Debentureholders, unless and until definitive certificate(s) have been issued to Beneficial Holders pursuant to this Section 3.2, the Trustee shall provide all such notices and communications to the Depository and the Depository shall deliver such notices and communications to such Beneficial Holders in accordance with Applicable Securities Legislation. Upon the termination of the book-based system on the occurrence of one of the conditions specified in Section 3.1.1 with respect to the Debentures issued hereunder, the Trustee shall notify all applicable Depository Participants and Beneficial Holders, through the Depository, of the availability of definitive Debenture Certificates. Upon

surrender by the Depository of the certificate(s) representing the Global Debentures, if any, and receipt of new registration instructions from the Depository, the Trustee shall deliver the definitive Debenture Certificates for such Debentures to the holders thereof in accordance with the new registration instructions and thereafter, the registration and transfer of such Debentures will be governed by Section 3.1 and the remaining Sections of this Article 3.

### **3.3 Transferee Entitled to Registration**

The transferee of a Debenture shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other registrar and upon compliance with all other conditions in that behalf required by this Indenture or by law, to be entered on the register as the owner of such Debenture free from all equities or rights of set-off or counterclaim between the Corporation and the transferor or any previous holder of such Debenture, save in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction. Upon surrender for registration of transfer of Debentures, the Corporation shall issue and thereupon the Trustee shall certify and deliver a new Debenture Certificate of like tenor in the name of the designated transferee and register such transfer in accordance with Section 3.1 and Section 3.2. If less than all the Debentures evidenced by the Debenture Certificate(s) so surrendered are transferred, the transferor shall be entitled to receive, in the same manner, a new Debenture Certificate registered in its name evidencing the Debentures not transferred.

Notwithstanding anything to the contrary contained herein, Debentures initially issued pursuant to Section 4(a)(2) of the U.S. Securities Act, regardless of whether represented by Fully Registered Debentures or Global Debentures and regardless of whether certificated Debentures or Uncertificated Debentures, may initially be transferred only to the Corporation or outside the United States in transactions in accordance with Rule 904 of Regulation S under the U.S. Securities Act; the Trustee shall not register any transfer of certificated Debentures made other than in accordance with this paragraph; and prior to any transfer of any such Debentures the holder will be required to deliver to the Trustee evidence in form and substance reasonably satisfactory to the Corporation to the effect that the transfer is being made to the Corporation or outside the United States in transactions in accordance with Rule 904 of Regulation S under the U.S. Securities Act.

### **3.4 No Notice of Trusts**

Neither the Corporation nor the Trustee nor any registrar shall be bound to take notice of or see to the execution of any trust (other than that created by this Indenture) whether express, implied or constructive, in respect of any Debenture, and may transfer the same on the direction of the Person registered as the holder thereof, whether named as trustee or otherwise, as though that Person were the beneficial owner thereof.

### **3.5 Registers Open for Inspection**

The registers referred to in Section 3.1 and Section 3.2 shall at all reasonable times be open for inspection by the Corporation, the Trustee or any Debentureholder. Every registrar, including the Trustee, shall from time to time when requested so to do by the Corporation in writing and upon payments of its reasonable fees, furnish the Corporation with a list of names and addresses of holders of registered Debentures entered on the register kept by them and showing the principal amount and serial numbers of the Debentures held by each such holder.

### **3.6 Exchanges of Debentures**

- 3.6.1 Subject to Section 3.1, Section 3.2 and Section 3.7, Debentures in any authorized form or denomination, other than Global Debentures, may be exchanged for Debentures in any other authorized form or denomination, of the same series and date of maturity, bearing the same interest rate and of the same aggregate principal amount as the Debentures so exchanged.
- 3.6.2 In respect of exchanges of Debentures permitted by Section 3.6.1, Debentures of any series may be exchanged only at the principal offices of the Trustee in the city of Toronto, Ontario or at such other place or places, if any, as may be specified in the Debentures of such series and at such other place or places as may from time to time be designated by the Corporation with the approval of the Trustee. Any Debentures surrendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Debentures necessary to carry out exchanges as aforesaid. All Debentures surrendered for exchange shall be cancelled.
- 3.6.3 Debentures issued in exchange for Debentures which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect.

### **3.7 Closing of Registers**

- 3.7.1 Neither the Corporation nor the Trustee nor any registrar shall be required to:
- (a) make transfers or exchanges or convert any Fully Registered Debentures on any Interest Payment Date for such Debentures or during the five preceding Business Days;
  - (b) make transfers or exchanges of, or convert any Debentures on the day of any selection by the Trustee of Debentures to be redeemed or during the five preceding Business Days;
  - (c) make exchanges of any Debentures which will have been selected or called for redemption unless upon due presentation thereof for redemption such Debentures shall not be redeemed, as the register for the applicable series of Debentures shall be closed in respect of such actions on such dates; or
  - (d) make conversions of any Debentures on the Business Day immediately preceding the Maturity Date for such Debentures or during such greater period prior to an applicable maturity date as directed in writing by the Corporation (which period shall not exceed the five Business Days preceding the applicable date of maturity).
- 3.7.2 Subject to any restriction herein provided, the Corporation with the approval of the Trustee may at any time close any register for any series of Debentures, other than those kept at the principal offices of the Trustee in Toronto, Ontario, and transfer the registration of any Debentures registered thereon to another register (which may be an existing register) and thereafter such Debentures shall be deemed to be registered on such other register. Notice of such transfer shall be given to the holders of such Debentures.

### **3.8 Charges for Registration, Transfer and Exchange**

For each Debenture exchanged, registered, transferred or discharged from registration, the Trustee or other registrar, except as otherwise herein provided, may make a reasonable charge for its services and in addition may charge a reasonable sum for each new Debenture issued (such amounts to be agreed upon from time to time by the Trustee and the Corporation), and payment of such charges and reimbursement of the Trustee or other registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the party requesting such exchange, registration, transfer or discharge from registration as a condition precedent thereto. Notwithstanding the foregoing provisions, no charge shall be made to a Debentureholder hereunder:

- (a) for any exchange, registration, transfer or discharge from registration of any Debenture applied for within a period of two months from the date of the first delivery of Debentures of that series or, with respect to Debentures subject to a Periodic Offering, within a period of two months from the date of delivery of any such Debenture;
- (b) for any exchange of any interim or temporary Debenture or interim certificate that has been issued under Section 2.10 for a certificated Debenture;
- (c) for any exchange of an Global Debenture as contemplated in Section 3.2; or
- (d) for any exchange of any Debenture resulting from a partial redemption under Section 2.4.5.

### **3.9 Ownership of Debentures**

- 3.9.1 Unless otherwise required by law, the Person in whose name any registered Debenture is registered shall for all purposes of this Indenture be and be deemed to be the owner thereof and payment of or on account of the principal of and premium, if any, on such Debenture and interest thereon shall be made to such registered holder.
- 3.9.2 The registered holder for the time being of any registered Debenture shall be entitled to the principal, premium, if any, and/or interest evidenced by such instruments, respectively, free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof and all Persons may act accordingly and the receipt of any such registered holder for any such principal, premium or interest shall be a good discharge to the Trustee, any registrar and to the Corporation for the same and none shall be bound to inquire into the title of any such registered holder.
- 3.9.3 Where Debentures are registered in more than one name, the principal, premium, if any, and interest from time to time payable in respect thereof may be paid to the order of all such holders, failing written instructions from them to the contrary, and the receipt of any one of such holders therefor shall be a valid discharge, to the Trustee, any registrar and to the Corporation.
- 3.9.4 In the case of the death of one or more joint holders of any Debenture the principal, premium, if any, and interest from time to time payable thereon may be paid to the order of the survivor or survivors of such registered holders and the receipt of any such survivor

or survivors thereof shall be a valid discharge to the Trustee and any registrar and to the Corporation.

## **ARTICLE 4 REDEMPTION BY THE CORPORATION**

### **4.1 Applicability of Article**

4.1.1 Subject to regulatory approval, subsection 2.4.5 and Article 5, the Corporation shall have the right at its option to redeem, either in whole at any time or in part from time to time before maturity, by payment of money, any Debentures issued hereunder of any series which by their terms are made so redeemable (subject, however, to any applicable restriction on the redemption of Debentures of such series) at such rate or rates of premium, if any, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debentures and as shall have been expressed in this Indenture, in the Debentures, in an Officer's Certificate, or in a supplemental indenture authorizing or providing for the issue thereof, or in the case of Additional Debentures issued pursuant to a Periodic Offering, in the Written Direction of the Corporation requesting the certification and delivery thereof.

4.1.2 Subject to Article 5, the Corporation shall have the obligation to repay on maturity, by payment of money in accordance with Section 2.14, any Debentures issued hereunder of any series which by their terms are made so repayable on maturity (subject however, to any applicable restriction on the repayment of the principal amount of the Debentures of such series) at such rate or rates of premium, if any, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debenture and shall have been expressed in this Indenture, in the Debentures, in an Officer's Certificate, or in a supplemental indenture authorizing or providing for the issue thereof, or in the case of Additional Debentures issued pursuant to a Periodic Offering, in the Written Direction of the Corporation requesting the certification and delivery thereof.

### **4.2 Partial Redemption**

If less than all the Debentures of any series for the time being outstanding are at any time to be redeemed, the Debentures to be so redeemed shall be selected by the Trustee on a pro rata basis to the nearest multiple of \$1,000 in accordance with the principal amount of the Debentures registered in the name of each holder or in such other manner as the Trustee deems equitable, as may be required from time to time. Unless otherwise specifically provided in the terms of any series of Debentures, no Debenture shall be redeemed in part unless the principal amount redeemed is \$1,000 or a multiple thereof. For this purpose, the Trustee may make, and from time to time vary, regulations with respect to the manner in which such Debentures may be drawn for redemption and regulations so made shall be valid and binding upon all holders of such Debentures notwithstanding that as a result thereof one or more of such Debentures may become subject to redemption in part only. In the event that one or more of such Debentures becomes subject to redemption in part only, upon surrender of any such Debentures for payment of the Redemption Price, the Corporation shall execute and the Trustee shall certify and deliver without charge to the holder thereof or upon the holder's order one or more new Debentures for the unredeemed part of the principal amount of the Debenture or Debentures so surrendered or, with respect to an Uncertificated Debenture, registration and surrender of interests in the Debentures will be made only through the Depository's non-certificated system. Unless the context otherwise

requires, the terms “**Debenture**” or “**Debentures**” as used in this Article 4 shall be deemed to mean or include any part of the principal amount of any Debenture which in accordance with the foregoing provisions has become subject to redemption

### **4.3 Notice of Redemption**

4.3.1 Notice of redemption (the “**Redemption Notice**”) of any series of Debentures shall be given to the holders of the Debentures so to be redeemed not more than 60 days nor less than 30 days prior to the date fixed for redemption (the “**Redemption Date**”) in the manner provided in Section 12.2. Every such notice shall specify the aggregate principal amount of Debentures called for redemption, the Redemption Date, the Redemption Price and the places of payment and shall state that interest upon the principal amount of Debentures called for redemption shall cease to be payable from and after the Redemption Date. In addition, unless all the outstanding Debentures are to be redeemed, the Redemption Notice shall specify:

- (a) the distinguishing letters and numbers of the registered Debentures which are to be redeemed (or of such thereof as are registered in the name of such Debentureholder);
- (b) in the case of a published notice, the distinguishing letters and numbers of the Debentures which are to be redeemed or, if such Debentures are selected by terminal digit or other similar system, such particulars as may be sufficient to identify the Debentures so selected;
- (c) in the case of an Uncertificated Debenture, that the redemption will take place in such manner as may be agreed upon by the Depository, the Trustee and the Corporation; and
- (d) in all cases, the principal amounts of such Debentures or, if any such Debenture is to be redeemed in part only, the principal amount of such part.

4.3.2 In the event that all Debentures to be redeemed are registered Debentures, publication shall not be required.

### **4.4 Debentures Due on Redemption Dates**

Notice having been given as aforesaid, all the Debentures so called for redemption shall thereupon be and become due and payable at the Redemption Price on the Redemption Date specified in such notice, in the same manner and with the same effect as if it were the date of maturity specified in such Debentures, anything therein or herein to the contrary notwithstanding, and from and after such Redemption Date, if the monies necessary to redeem such Debentures shall have been deposited as provided in Section 4.5 and affidavits or other proof satisfactory to the Trustee as to the publication and/or mailing of such notices shall have been lodged with it, interest upon the Debentures shall cease. If any question shall arise as to whether any notice has been given as above provided and such deposit made, such question shall be decided by the Trustee whose decision shall be final and binding upon all parties in interest.

#### **4.5 Deposit of Redemption Monies**

Redemption of Debentures shall be provided for by the Corporation depositing with the Trustee or any paying agent to the order of the Trustee, on or before 2:00 p.m. (Eastern Standard Time) on the Business Day immediately prior to the Redemption Date specified in such notice, such sums of money as may be sufficient to pay the Redemption Price of the Debentures so called for redemption, provided the Corporation may elect to satisfy this requirement by providing the Trustee with a certified cheque or wire transfer for such amounts required under this Section 4.5. The Corporation shall also deposit with the Trustee a sum of money sufficient to pay any charges or expenses which may be incurred by the Trustee in connection with such redemption. Every such deposit shall be irrevocable. From the sums so deposited, the Trustee shall pay or cause to be paid to the holders of such Debentures so called for redemption, upon surrender of such Debentures, the principal, premium (if any) and interest (if any) to which they are respectively entitled on redemption.

#### **4.6 Failure to Surrender Debentures Called for Redemption**

In case the holder of any Debenture so called for redemption shall fail on or before the Redemption Date to so surrender such holder's Debenture, or shall not within such time accept payment of the redemption monies payable, or give such receipt therefor, if any, as the Trustee may require, such redemption monies may be set aside in trust, either in the deposit department of the Trustee or in a chartered bank, and such setting aside shall for all purposes be deemed a payment to the Debentureholder of the sum so set aside and, to that extent, the Debenture shall thereafter not be considered as outstanding hereunder and the Debentureholder shall have no other right except to receive payment out of the monies so paid and deposited, upon surrender and delivery of such holder's Debenture, plus any accrued but unpaid interest thereon to but excluding the Redemption Date. In the event that any money required to be deposited hereunder with the Trustee or any depository or paying agent on account of principal, premium, if any, or interest, if any, on Debentures issued hereunder shall remain so deposited for a period of six years from the Redemption Date, then such monies shall at the end of such period be paid over or delivered over by the Trustee or such depository or paying agent to the Corporation on its demand, and thereupon the Trustee shall not be responsible to Debentureholders for any amounts owing to them and subject to applicable law, thereafter the holder of a Debenture in respect of which such money was so repaid to the Corporation shall have no rights in respect thereof except to obtain payment of the money due from the Corporation, subject to any limitation period provided by the laws of British Columbia. Notwithstanding the foregoing, the Trustee will pay any remaining funds prior to the expiry of six years after the Redemption Date to the Corporation upon receipt from the Corporation, of an unconditional letter of credit from a Canadian chartered bank in an amount equal to or in excess of the amount of the remaining funds.

#### **4.7 Cancellation of Debentures Redeemed**

Subject to the provisions of Sections 4.2 and 4.8 as to Debentures redeemed or purchased in part, all Debentures redeemed and paid under this Article 4 shall forthwith be delivered to the Trustee and cancelled and no Debentures shall be issued in substitution for those redeemed.

#### **4.8 Purchase of Debentures by the Corporation**

4.8.1 Unless otherwise specifically provided with respect to a particular series of Debentures, the Corporation may, if it is not at the time in default hereunder, at any time and from time to time, purchase Debentures in the market (which shall include purchases from or through

an investment dealer or a firm holding membership on a recognized stock exchange) or by tender or by contract. All Debentures so purchased will be delivered to the Trustee and shall be cancelled and no Debentures shall be issued in substitution therefor.

- 4.8.2 If, upon an invitation for tenders, more Debentures are tendered at the same lowest price than the Corporation is prepared to accept, the Debentures to be purchased by the Corporation shall be selected by the Trustee on a pro rata basis from the Debentures tendered by each tendering Debentureholder who tendered at such lowest price all as directed in a Written Direction of the Corporation provided to the Trustee. For this purpose the Trustee may make, and from time to time amend, regulations with respect to the manner in which Debentures may be so selected, and regulations so made shall be valid and binding upon all Debentureholders, notwithstanding the fact that as a result thereof one or more of such Debentures become subject to purchase in part only. The holder of a Debenture of which a part only is purchased, upon surrender of such Debenture for payment, shall be entitled to receive, without expense to such holder, one or more new Debentures for the unpurchased part so surrendered, and the Trustee shall certify and deliver such new Debenture or Debentures upon receipt of the Debenture so surrendered or, with respect to an Uncertificated Debenture, take such measures as required through the Depository's non-certificated system to evidence the remaining portion of the Debentures;

## **ARTICLE 5 SUBORDINATION OF DEBENTURES**

### **5.1 Applicability of Article**

The indebtedness, liabilities and obligations of the Corporation hereunder (except as provided in Section 14.14) or under the Debentures, whether on account of principal, premium, if any, interest or otherwise, but excluding the issuance of Common Shares upon any conversion pursuant to Article 6 (collectively, the "**Debenture Liabilities**"), shall be subordinated and postponed and subject in right of payment, to the extent and in the manner hereinafter set forth in the following Sections of this Article 5, to the full and final payment of all Secured Indebtedness, and each holder of any such Debenture by its acceptance thereof agrees to and shall be bound by the provisions of this Article 5.

### **5.2 Order of Payment**

- 5.2.1 In the event of any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization or other similar proceedings relative to the Corporation, or to its property or assets, or in the event of any proceedings for voluntary liquidation, dissolution or voluntary winding-up of the Corporation, whether or not involving insolvency or bankruptcy, or any marshalling of the assets and liabilities of the Corporation:
- (a) all Secured Indebtedness shall first be paid in full, or provision made for such payment, before any payment is made on account of Debenture Liabilities;
  - (b) any payment or distribution of assets of the Corporation, whether in cash, property or securities, to which the holders of the Debentures or the Trustee on behalf of such holders would be entitled except for the provisions of this Article 5, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other liquidating agent making such payment or distribution, directly

to the holders of Secured Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Secured Indebtedness may have been issued, to the extent necessary to pay all Secured Indebtedness in full after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Secured Indebtedness; and

- (c) the Secured Creditors or a receiver or a receiver-manager of the Corporation or of all or part of its assets or any other enforcement agent may sell, mortgage, or otherwise dispose of the Corporation's assets in whole or in part, free and clear of all Debenture Liabilities and without the approval of the Debentureholders or the Trustee.

5.2.2 The rights and priority of the Secured Indebtedness and the subordination pursuant hereto shall not be affected by:

- (a) the time, sequence or order of creating, granting, executing, delivering of, or registering, perfecting or failing to register or perfect any security notice, caveat, financing statement or other notice in respect of any security securing the Secured Indebtedness (the "**Senior Security**");
- (b) the time or order of the attachment, perfection or crystallization of any security constituted by the Senior Security;
- (c) the taking of any collection, enforcement or realization proceedings pursuant to the Senior Security;
- (d) the date of obtaining of any judgment or order of any bankruptcy court or any court administering bankruptcy, insolvency or similar proceedings as to the entitlement of the Secured Creditors, or any of them or the Debentureholders or any of them to any money or property of the Corporation;
- (e) the failure to exercise any power or remedy reserved to the Secured Creditors under the Senior Security or to insist upon a strict compliance with any terms thereof;
- (f) whether any Senior Security is now perfected, hereafter ceases to be perfected, is avoidable by any trustee in bankruptcy or like official or is otherwise set aside, invalidated or lapses;
- (g) the date of giving or failing to give notice to or making demand upon the Corporation; or
- (h) any other matter whatsoever.

### **5.3 Subrogation to Rights of Holders of Secured Indebtedness**

5.3.1 Subject to the prior payment in full of all Secured Indebtedness, the holders of the Debentures shall be subrogated to the rights of the holders of Secured Indebtedness to receive payments or distributions of assets of the Corporation to the extent of the application thereto of such payments or other assets which would have been received by

the holders of the Debentures but for the provisions hereof until the principal of, premium, if any, and interest on the Debentures shall be paid in full, and no such payments or distributions to the holders of the Debentures of cash, property or securities, which otherwise would be payable or distributable to the holders of the Secured Indebtedness, shall, as between the Corporation, its creditors other than the holders of Secured Indebtedness, and the holders of Debentures, be deemed to be a payment by the Corporation to the holders of the Secured Indebtedness or on account of the Secured Indebtedness, it being understood that the provisions of this Article 5 are and are intended solely for the purpose of defining the relative rights of the holders of the Debentures, on the one hand, and the holders of Secured Indebtedness, on the other hand.

- 5.3.2 The Trustee, for itself and on behalf of each of the Debentureholders, hereby waives any and all rights to require a Secured Creditor to pursue or exhaust any rights or remedies with respect to the Corporation or any property and assets subject to any Senior Security or in any other manner to require the marshalling of property, assets or security in connection with the exercise by the Secured Creditors of any rights, remedies or recourses available to them.

#### **5.4 Obligation to Pay Not Impaired**

Nothing contained in this Article 5 or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Corporation, its creditors other than the holders of Secured Indebtedness, and the holders of the Debentures, the obligation of the Corporation, which is absolute and unconditional, to pay to the holders of the Debentures the principal of, premium, if any, and interest on the Debentures, as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the holders of the Debentures and creditors of the Corporation other than the holders of the Secured Indebtedness, nor shall anything herein or therein prevent the Trustee or the holder of any Debenture from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 5 of the holders of Secured Indebtedness in respect of cash, property or securities.

#### **5.5 No Payment if Secured Indebtedness in Default**

- 5.5.1 Upon the maturity of any Secured Indebtedness by lapse of time, acceleration or otherwise, or any other enforcement of any Secured Indebtedness, then, except as provided in Section 5.8, all such Secured Indebtedness shall first be paid in full, or shall first have been duly provided for, before any payment is made on account of the Debenture Liabilities.
- 5.5.2 In case of a circumstance constituting a default or event of default with respect to any Secured Indebtedness permitting (whether at that time or upon notice, lapse of time, or satisfaction of any other condition precedent) a Secured Creditor to demand payment or accelerate the maturity thereof where the notice of such default or event of default has been given by or on behalf of the holders of Secured Indebtedness to the Corporation or the Corporation otherwise has knowledge thereof, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no payment (by purchase of Debentures or otherwise) shall be made by the Corporation (except as provided in Section 4.8) with respect to the Debenture Liabilities and neither the Trustee nor the holders of Debentures shall be entitled to demand, institute proceedings for the collection of (which shall, for certainty include proceedings related to an adjudication or

declaration as to the insolvency or bankruptcy of the Corporation and other similar creditor proceedings), or receive any payment or benefit (including without limitation by set-off, combination of accounts or otherwise in any manner whatsoever) on account of the Debentures after the happening of such a default or event of default (except as provided in Section 4.8), and unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, such payments shall be held in trust for the benefit of, and, if and when such Secured Indebtedness shall have become due and payable, shall be paid over to, the holders of the Secured Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing an amount of the Secured Indebtedness remaining unpaid until all such Secured Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Secured Indebtedness.

5.5.3 The fact that any payment hereunder is prohibited by this Section 5.5 shall not prevent the failure to make such payment from being an Event of Default hereunder.

## **5.6 Payment on Debentures Permitted**

Nothing contained in this Article 5 or elsewhere in this Indenture, or in any of the Debentures, shall affect the obligation of the Corporation to make, or prevent the Corporation from making, at any time except as prohibited by Section 5.2 or Section 5.5, any payment of principal of or, premium, if any, or interest on the Debentures. The fact that any such payment is prohibited by Section 5.2 or Section 5.5 shall not prevent the failure to make such payment from being an Event of Default hereunder. Nothing contained in this Article 5 or elsewhere in this Indenture, or in any of the Debentures, shall prevent the conversion of the Debentures or, except as prohibited by Section 5.2 or Section 5.5, the application by the Trustee of any monies deposited with the Trustee hereunder for the purpose, to the payment of or on account of the Debenture Liabilities.

## **5.7 Confirmation of Subordination**

Each holder of Debentures by its acceptance thereof authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effect the subordination as provided in this Article 5 and appoints the Trustee its attorney-in-fact for any and all such purposes. Upon request of the Corporation, and upon being furnished an Officer's Certificate stating that one or more named Persons are Secured Creditors and specifying the amount and nature of the Secured Indebtedness of such Secured Creditor, the Trustee shall enter into a written agreement or agreements with the Corporation and the Person or Persons named in such Officer's Certificate providing that such Person or Persons are entitled to all the rights and benefits of this Article 5 as a Secured Creditor and for such other matters, such as an agreement not to amend the provisions of this Article 5 and the definitions herein without the consent of such Secured Creditor, as the Secured Creditor may reasonably request. Such agreement shall be conclusive evidence that the indebtedness specified therein is Secured Indebtedness; however, nothing herein shall impair the rights of any Secured Creditor who has not entered into such an agreement.

## **5.8 Knowledge of Trustee**

Notwithstanding the provisions of this Article 5 or any provision in this Indenture or in the Debentures contained, the Trustee will not be charged with knowledge of any Secured Indebtedness or of any default in the payment thereof, or of the existence of any Event of Default or any other fact that would prohibit the making of any payment of monies to or by the Trustee, or

the taking of any other action by the Trustee, unless and until the Trustee has received written notice thereof from the Corporation, any Debentureholder or any Secured Creditor.

#### **5.9 Trustee May Hold Secured Indebtedness**

The Trustee is entitled to all the rights set forth in this Article 5 with respect to any Secured Indebtedness at the time held by it, to the same extent as any other holder of Secured Indebtedness, and nothing in this Indenture deprives the Trustee of any of its rights as such holder.

#### **5.10 Rights of Holders of Secured Indebtedness Not Impaired**

No right of any present or future holder of any Secured Indebtedness to enforce the subordination herein will at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Corporation or by any non-compliance by the Corporation with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

#### **5.11 Altering the Secured Indebtedness**

The holders of the Secured Indebtedness have the right to extend, renew, modify or amend the terms of the Secured Indebtedness or any security therefor and to release, sell or exchange such security and otherwise to deal freely with the Corporation, all without notice to or consent of the Debentureholders or the Trustee and without affecting the liabilities and obligations of the parties to this Indenture or the Debentureholders.

#### **5.12 Additional Indebtedness**

This Indenture does not restrict the Corporation from incurring additional indebtedness for borrowed money or other obligations or liabilities (including Secured Indebtedness) or mortgaging, pledging or charging its properties to secure any indebtedness or liabilities.

#### **5.13 Right of Debentureholder to Convert Not Impaired**

The subordination of the Debentures to the Secured Indebtedness and the provisions of this Article 5 do not impair in any way the right of a Debentureholder to convert its Debentures pursuant to Article 6.

#### **5.14 Invalidated Payments**

In the event that any of the Secured Indebtedness shall be paid in full and subsequently, for whatever reason, such formerly paid or satisfied Secured Indebtedness becomes unpaid or unsatisfied, the terms and conditions of this Article 5 shall be reinstated and the provisions of this Article 5 shall again be operative until all Secured Indebtedness is repaid in full, provided that such reinstatement shall not give the Secured Creditors any rights or recourses against the Trustee or the Debentureholders for amounts paid to the Debentureholders subsequent to such payment or satisfaction in full and prior to such reinstatement.

## **5.15 Contesting Security**

The Trustee, for itself and on behalf of the Debentureholders, agrees that it shall not contest or bring into question the validity, perfection or enforceability of any of the Secured Indebtedness, the Senior Security or the relative priority of the Senior Security.

## **ARTICLE 6 CONVERSION OF DEBENTURES**

### **6.1 Applicability of Article**

- 6.1.1 Any Debentures issued hereunder of any series which by their terms are convertible (subject, however, to any applicable restriction of the conversion of Debentures of such series) will be convertible into Common Shares or other securities of the Corporation, at such conversion rate or rates, and on such date or dates and in accordance with such other provisions as shall have been determined at the time of issue of such Debentures and shall have been expressed in this Indenture (including Section 2.4.6 and Section 3.7 hereof), in such Debentures, in an Officer's Certificate, or in a supplemental indenture authorizing or providing for the issue thereof.
- 6.1.2 Such right of conversion shall extend only to the maximum number of whole Common Shares into which the aggregate principal amount of the Debenture or Debentures surrendered for conversion at any one time by the holder thereof may be converted.

Fractional interests in Common Shares shall be adjusted for in the manner provided in Section 6.4.

### **6.2 Manner of Exercise of Right to Convert**

- 6.2.1 The holder of a Debenture desiring to convert such Debenture in whole or in part into Common Shares shall surrender such Debenture to the Trustee at its principal offices in Toronto, Ontario together with a conversion notice in the form attached hereto as Schedule B or any other written notice in a form satisfactory to the Trustee, duly executed by the holder or its executors or administrators or other legal representatives or his, her, its or their attorney duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Trustee, exercising its right to convert such Debenture in accordance with the provisions of this Article 6; provided that with respect to a Global Debenture, the obligation to surrender a Debenture to the Trustee shall be satisfied if the Trustee makes notation on the Global Debenture of the principal amount thereof so converted and the Trustee is provided with all other documentation which it may request. Thereupon, subject to compliance with the applicable terms and provisions hereof and payment of all applicable stamp or security transfer, income, withholding or other taxes or other governmental charges and compliance with all reasonable requirements of the Trustee, the Conversion Price shall have been paid and such Debentureholder or its nominee(s) or assignee(s) shall be entitled to be entered in the books of the Corporation on the Date of Conversion (or such later date as is specified in Section 6.2.2), as the holder of the number of Common Shares into which such Debenture is convertible, in accordance with the provisions of this Article 6 and, as soon as practicable thereafter, the Corporation shall: (i) deliver or cause to be delivered to the Debentureholder, or subject as aforesaid, its nominee(s) or assignee(s) such certificate or certificates for such Common Shares or deposit such Common Shares through the Depository's non-

certificated system; and (ii) make or cause to be made any payment of interest to which such holder is entitled in accordance with Section 6.2.5.

- 6.2.2 For the purposes of this Article 6, a Debenture shall be deemed to be surrendered for conversion on the date on which it is so surrendered in proper form when the register of the Trustee is open and in accordance with the provisions of this Article 6 or, in the case of a Global Debenture, on the date on which the Trustee received notice of and all necessary documentation in respect of the exercise of the conversion rights and, in the case of a Debenture so surrendered by post or other means of transmission, on the date on which it is received in proper form by the Trustee at its office specified in Section 6.2.1; provided that if a Debenture is surrendered for conversion on a day on which the register of Debentures and Common Shares is closed, the Person or Persons entitled to receive Common Shares shall become the holder or holders of record of such Common Shares as at the date on which such registers are next reopened (in each case the “**Date of Conversion**”).
- 6.2.3 Any part, being \$1,000 or an integral multiple thereof, of a Debenture in a denomination in excess of \$1,000 may be converted as provided in this Article 6 and all references in this Indenture to conversion of Debentures shall be deemed to include conversion of such parts.
- 6.2.4 The holder of any Debenture of which only a part is converted shall, upon the exercise of its right of conversion surrender such Debenture to the Trustee in accordance with Section 5.2.1, and the Trustee shall cancel the same and shall without charge forthwith certify or Authenticate, as applicable, and deliver to the holder a new Debenture or Debentures in an aggregate principal amount equal to the unconverted part of the principal amount of the Debenture so surrendered or, with respect to a Global Debenture, the Trustee shall make notations on the Global Debentures of the principal amount thereof so converted.
- 6.2.5 Except as may be otherwise expressly provided for at the time of issue of such Debentures, as expressed in this Indenture, in such Debentures, in an Officer’s Certificate, or in a supplemental indenture authorizing or providing for the issue thereof, the holder of a Debenture surrendered for conversion in accordance with this Section 6.2 shall be entitled (subject to any applicable restriction on the right to receive interest on conversion of Debentures of any series) to receive accrued and unpaid interest in respect thereof, in cash, up to but excluding the Date of Conversion and the Common Shares issued upon such conversion shall rank only in respect of distributions or dividends declared in favour of shareholders of record on and after the Date of Conversion or such later date as such holder shall become the holder of record of such Common Shares pursuant to Section 6.2.2, from which applicable date they will for all purposes be and be deemed to be issued and outstanding as fully paid and non-assessable Common Shares.

### **6.3 Adjustment of Conversion Price**

The Conversion Price in effect at any date shall be subject to adjustment from time to time as set forth below.

- (a) If and whenever at any time prior to the Time of Expiry the Corporation shall
- (i) subdivide or redivide the outstanding Common Shares into a greater number of shares,

- (ii) reduce, combine or consolidate the outstanding Common Shares into a smaller number of shares,
- (iii) issue Common Shares or securities exchangeable or convertible into Common Shares to the holders of all or substantially all of the outstanding Common Shares or other securities of the Corporation by way of a dividend or distribution (other than the issue of Common Shares to holders of Common Shares who have elected to receive dividends or distributions in the form of Common Shares in lieu of cash dividends or cash distributions paid in the ordinary course on the Common Shares), or
- (iv) the distribution to all or substantially all of the holders of Common Shares of any other class of shares, rights, options or warrants, evidences of indebtedness or assets,

the Conversion Price in effect on the effective date of such subdivision, redivision, reduction, combination or consolidation or on the record date for such issue of Common Shares by way of a dividend or distribution, as the case may be, shall in the case of any of the events referred to in (i) and (iii) above be decreased in proportion to the number of outstanding Common Shares resulting from such subdivision, redivision or dividend, or shall, in the case of any of the events referred to in (ii) above, be increased in proportion to the number of outstanding Common Shares resulting from such reduction, combination or consolidation. Such adjustment shall be made successively whenever any event referred to in this Section 6.3(a) shall occur. Any such issue of Common Shares by way of a dividend or distribution shall be deemed to have been made on the record date for the dividend or distribution for the purpose of calculating the number of outstanding Common Shares under subsections (c) and (d) of this Section 6.3.

- (b) If and whenever at any time prior to the Time of Expiry the Corporation shall fix a record date for the payment of a cash dividend or distribution to the holders of all or substantially all of the outstanding Common Shares or other securities of the Corporation, the Conversion Price shall be adjusted immediately after such record date so that it shall be equal to the price determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the denominator shall be the Current Market Price on such record date and of which the numerator shall be the Current Market Price on such record date minus the amount in cash per Common Share or other securities distributed to holders of such securities. Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such cash dividend or distribution is not paid, the Conversion Price shall be re-adjusted to the Conversion Price which would then be in effect if such record date had not been fixed.
- (c) If and whenever at any time prior to the Time of Expiry the Corporation shall fix a record date for the issuance of options, rights or warrants to all or substantially all the holders of its outstanding Common Shares or other securities entitling them, for a period expiring not more than 45 days after such record date, to subscribe for or purchase Common Shares (or securities convertible into Common Shares) at a price per share (or having a conversion or exchange price per share) less than 95% of the Current Market Price on such record date, the Conversion Price shall be adjusted immediately after such record date so that it shall equal the price

determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the numerator shall be the total number of Common Shares outstanding on such record date plus a number of Common Shares equal to the number arrived at by dividing the aggregate price of the total number of additional Common Shares offered for subscription or purchase (or the aggregate conversion or exchange price of the convertible securities so offered) by such Current Market Price, and of which the denominator shall be the total number of Common Shares outstanding on such record date plus the total number of additional Common Shares offered for subscription or purchase (or into which the convertible securities so offered are convertible). Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such options, rights or warrants are not so issued or any such options, rights or warrants are not exercised prior to the expiration thereof, the Conversion Price shall be re-adjusted to the Conversion Price which would then be in effect if such record date had not been fixed or to the Conversion Price which would then be in effect based upon the number of Common Shares (or securities convertible into Common Shares) actually issued upon the exercise of such options, rights or warrants were included in such fraction, as the case may be.

- (d) Subject to Section 2.4.11, if and whenever at any time prior to the Time of Expiry, there is a reclassification of the Common Shares or a capital reorganization of the Corporation other than as described earlier in this Section 6.3 or a consolidation, amalgamation, arrangement, share exchange, merger of the Corporation with or into any other Person or other entity or acquisition of the Corporation or other combination pursuant to which the Common Shares are converted into or acquired for cash, securities or other property; or a sale or conveyance of the property and assets of the Corporation as an entirety or substantially as an entirety to any other Person (other than a direct or indirect wholly-owned Subsidiary of the Corporation) or other entity or a liquidation, dissolution or winding-up of the Corporation (any such event, a **“Merger Event”**), any holder of a Debenture who has not exercised its right of conversion prior to the effective date of such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, upon the exercise of such right thereafter, shall be entitled to receive and shall accept, in lieu of the number of Common Shares then sought to be acquired by it, such amount of cash or the number of shares or other securities or property of the Corporation or of the Person or other entity resulting from such merger, amalgamation, arrangement, acquisition, combination or consolidation, or to which such sale or conveyance may be made or which holders of Common Shares receive pursuant to such liquidation, dissolution or winding-up, as the case may be, that such holder of a Debenture would have been entitled to receive on such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, if, on the record date or the effective date thereof, as the case may be, the holder had been the registered holder of the number of Common Shares sought to be acquired by it and to which it was entitled to acquire upon the exercise of the conversion right, subject to Section 6.3(m). If determined appropriate by the Board of Directors, to give effect to or to evidence the provisions of this Section 6.3(d), the Corporation, its successor, or such purchasing Person or other entity, as the case may be, shall, prior to or contemporaneously with any such reclassification, capital

reorganization, consolidation, amalgamation, arrangement, merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, enter into an indenture which shall provide, to the extent possible, for the application of the provisions set forth in this Indenture with respect to the rights and interests thereafter of the holder of Debentures to the end that the provisions set forth in this Indenture shall thereafter correspondingly be made applicable, as nearly as may reasonably be, with respect to any cash, shares or other securities or property to which a holder of Debentures is entitled on the exercise of its acquisition rights thereafter. Any indenture entered into between the Corporation and the Trustee pursuant to the provisions of this Section 6.3(d) shall be a supplemental indenture entered into pursuant to the provisions of Article 15. Any indenture entered into between the Corporation, any successor to the Corporation or such purchasing Person or other entity and the Trustee shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided in this Section 6.3(d) and which shall apply to successive reclassifications, capital reorganizations, amalgamations, consolidations, mergers, share exchanges, acquisitions, combinations, sales or conveyances. For greater certainty, nothing in this Section 6.3(d) shall affect or reduce the requirement for any Person to make a Change of Control Purchase Offer, and notice of any transaction to which this Section 6.3(d) applies shall be given in accordance with Section 6.10.

- (e) If the Corporation shall make a distribution to all or substantially all of the holders of shares in the capital of the Corporation, other than Common Shares, or evidences of indebtedness or other assets of the Corporation, including securities (but excluding (i) any issuance of rights or warrants for which an adjustment was made pursuant to Section 6.3(d) and (ii) any dividend or distribution paid exclusively in cash (the “**Distributed Securities**”)), then in each such case (unless the Corporation distributes such Distributed Securities to the holders of Debentures on such dividend or distribution date (as if each holder had converted such Debenture into Common Shares immediately preceding the record date with respect to such distribution)) the Conversion Price in effect immediately preceding the record date fixed for the determination of shareholders entitled to receive such dividend or distribution shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately preceding such record date by a fraction of which the denominator shall be the Current Market Price per Common Share on such record date and of which the numerator shall be the Current Market Price per Common Share on such record date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value, subject to approval by the CSE (or such other recognized stock exchange on which the Common Shares are listed for trading) and which shall be evidenced by an Officer’s Certificate delivered to the Trustee) on such record date of the portion of the Distributed Securities so distributed applicable to one Common Share (determined on the basis of the number of Common Shares outstanding at the close of business on such record date). Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of shareholders entitled to receive such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such dividend or distribution had not been declared. If the then fair market value (as so

determined) of the portion of the Distributed Securities so distributed applicable to one Common Share is equal to or greater than the Current Market Price per Common Share on such record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of a Debenture shall have the right to receive upon conversion the amount of Distributed Securities so distributed that such holder would have received had such holder converted each Debenture on such record date. If the Board of Directors determines the fair market value of any distribution for purposes of this clause (e) of Section 6.3 by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Shares.

Notwithstanding the foregoing, if the securities distributed by the Corporation to all holders of its Common Shares consist of capital stock of, or similar equity interests in, a Subsidiary or other business of the Corporation (the “**Spinoff Securities**”), the Conversion Price shall be adjusted, unless the Corporation makes an equivalent distribution to the holders of Debentures, so that the same shall be equal to the rate determined by multiplying the Conversion Price in effect on the record date fixed for the determination of shareholders entitled to receive such distribution by a fraction, the denominator of which shall be the sum of: (A) the VWAP (the “**Spinoff Valuation Period**”) commencing on and including the fifth trading day after the date on which ex-dividend trading commences for such distribution on the CSE (or such other exchange on which the Common Shares are then listed); and (B) the product of: (i) the VWAP (calculated in substantially the same way as the Current Market Price is calculated) over the Spinoff Valuation Period of the Spinoff Securities or, if no such prices are available, the fair market value of the Spinoff Securities as reasonably determined by the Board of Directors (which determination shall be conclusive and shall be evidenced by an Officer’s Certificate delivered to the Trustee) multiplied by; (ii) the number of Spinoff Securities distributed in respect of one Common Share and the numerator of which shall be the VWAP over the Spinoff Valuation Period, such adjustment to become effective immediately preceding the opening of business on the 25th trading day after the date on which ex-dividend trading commences; provided, however, that the Corporation may in lieu of the foregoing adjustment elect to make adequate provision so that each holder of Debentures shall have the right to receive upon conversion thereof the amount of such Spinoff Securities that such holder of Debentures would have received if such Debentures had been converted on the record date with respect to such distribution.

- (f) If any issuer bid made by the Corporation or any of its Subsidiaries for all or any portion of Common Shares shall expire, then, if the issuer bid shall require the payment to shareholders of consideration per Common Share having a fair market value (determined as provided below) that exceeds the Current Market Price on the last date (the “**Expiration Date**”) tenders could have been made pursuant to such issuer bid (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the “**Expiration Time**”), the Conversion Price shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Price in effect immediately preceding the close of business on the Expiration Date by a fraction of which (i) the denominator shall be the sum of (A) the fair market value of the aggregate consideration (the fair market value as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officer’s Certificate delivered to the Trustee) payable to shareholders based on the acceptance (up to any maximum specified in the terms of the issuer bid) of all Common Shares validly tendered and not

withdrawn as of the Expiration Time (the Common Shares deemed so accepted, up to any such maximum, being referred to as the “**Purchased Common Shares**”) and (B) the product of the number of Common Shares outstanding (less any Purchased Common Shares but excluding any Common Shares held in the treasury of the Corporation) at the Expiration Time and the Current Market Price on the Expiration Date and (ii) the numerator of which shall be the product of the number of Common Shares outstanding (including Purchased Common Shares but excluding any Common Shares held in the treasury of the Corporation) at the Expiration Time multiplied by the Current Market Price on the Expiration Date, such increase to become effective immediately preceding the opening of business on the day following the Expiration Date. In the event that the Corporation is obligated to purchase Common Shares pursuant to any such issuer bid, but the Corporation is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would have been in effect based upon the number of Common Shares actually purchased, if any. If the application of this clause (f) of Section 6.3 to any issuer bid would result in a decrease in the Conversion Price, no adjustment shall be made for such issuer bid under this clause (f).

For purposes of this Section 6.3(f), the term “**issuer bid**” shall mean an issuer bid under Applicable Securities Legislation or a take-over bid under Applicable Securities Legislation by a Subsidiary of the Corporation for the Common Shares and all references to “purchases” of Common Shares in issuer bids (and all similar references) shall mean and include the purchase of Common Shares in issuer bids and all references to “tendered Common Shares” (and all similar references) shall mean and include Common Shares tendered in issuer bids.

- (g) In any case in which this Section 6.3 shall require that an adjustment shall become effective immediately after a record date for an event referred to herein, the Corporation may defer, until the occurrence of such event, issuing to the holder of any Debenture converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event before giving effect to such adjustment; provided, however, that the Corporation shall deliver to such holder an appropriate instrument evidencing such holder’s right to receive such additional Common Shares upon the occurrence of the event requiring such adjustment and the right to receive any distributions made on such additional Common Shares declared in favour of holders of record of Common Shares on and after the Date of Conversion or such later date as such holder would, but for the provisions of this Section 6.3(g), have become the holder of record of such additional Common Shares pursuant to Section 6.2.1.
- (h) The adjustments provided for in this Section 6.3 are cumulative and shall apply to successive subdivisions, redivisions, reductions, combinations, consolidations, distributions, issues or other events resulting in any adjustment under the provisions of this Section, provided that, notwithstanding any other provision of this Section, no adjustment of the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided however, that any adjustments which by reason of this Section 6.3(h) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

- (i) For the purpose of calculating the number of Common Shares outstanding, Common Shares owned by or for the benefit of the Corporation or any Subsidiary shall not be counted.
- (j) In the event of any question arising with respect to the adjustments provided in this Section 6.3, such question shall be conclusively determined by the Board of Directors, and in the event holders of not less than 25% of the principal amount of the Debentures then outstanding notify the Trustee that they do not agree with such determination within 14 days of such determination being communicated to all the holders, such determination shall be made by a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation); such accountants shall have access to all necessary records of the Corporation and such determination shall be binding upon the Corporation, the Trustee, and the Debentureholders. In the absence of notice by holders of not less than 25% of the principal amount of the Debentures then outstanding of their disagreement as aforesaid, the determination of the Board of Directors shall be binding.
- (k) In case the Corporation shall take any action affecting the Common Shares other than action described in this Section 5.3, which in the opinion of the Board of Directors, would materially affect the rights of Debentureholders, the Conversion Price shall be adjusted in such manner and at such time, by action of the Board of Directors, as the Board of Directors, in their sole discretion may determine to be equitable in the circumstances. Failure of the directors to make such an adjustment shall be conclusive evidence that they have determined that it is equitable to make no adjustment in the circumstances.
- (l) No adjustment in the Conversion Price shall be made in respect of any event described in Section 6.3(a), Section 6.3(b), Section 6.3(c), Section 6.3(e) or Section 6.3(f) other than the events described in Section 6.3(a)(i) or Section 6.3(a)(ii) if the holders of the Debentures are entitled to participate in such event on the same terms mutatis mutandis as if they had converted their Debentures prior to the effective date or record date, as the case may be, of such event.
- (m) Except as stated above in this Section 6.3 (including Section 6.3(c), no adjustment will be made in the Conversion Price for any Debentures as a result of the issuance of Common Shares at less than the Current Market Price on the date of issuance or the then applicable Conversion Price.

#### **6.4 No Requirement to Issue Fractional Common Shares**

The Corporation shall not be required to issue fractional Common Shares upon the conversion of Debentures pursuant to this Article 6. If more than one Debenture shall be surrendered for conversion at one time by the same holder, the number of whole Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of such Debentures to be converted. If any fractional interest in a Common Share would, except for the provisions of this Section, be deliverable upon the conversion of any principal amount of Debentures, the number of Common Shares so issuable shall be rounded down to the nearest whole number without any compensation to the Debentureholder.

## 6.5 Forced Conversion

Notwithstanding anything to the contrary contained herein and subject to any required regulatory approval and provided no Event of Default has occurred and is continuing, if, at any time following April 24, 2022 and prior to the Maturity Date, the VWAP is greater than \$1.20, as adjusted in accordance with Section 6.3, for the preceding 10 consecutive trading days, the Corporation shall have the option to convert all but not less than all of the principal amount of the then outstanding Initial Debentures at the then applicable Conversion Price, with not more than 60 and not less than 30 days' prior written notice to the Trustee (the "**Forced Conversion Notice**"), in accordance with Section 13.2. Holders whose Initial Debentures are so converted pursuant to this section will receive accrued and unpaid interest thereon for the period from and including the last Interest Payment Date to, but excluding, the Forced Conversion Date. No later than the Business Day immediately preceding the Forced Conversion Date, the Corporation shall pay to the Trustee in lawful money of Canada an amount equal to all accrued and unpaid interest on the Initial Debentures, less any tax required to be deducted, for payment onto the Debentureholders.

In the event that the Corporation exercises its right to force conversion of all of the principal amount of the then outstanding Initial Debentures pursuant to this Section 6.5, the effective date for the forced conversion (the "**Forced Conversion Date**") shall be: (a) the date stipulated in the Forced Conversion Notice which shall not be less than 30 days from the date of the Forced Conversion Notice; or (b) if no date is so stipulated in the Forced Conversion Notice, the date that is 30 days following the date of such Forced Conversion Notice, and upon such Forced Conversion Date: (i) all of the principal amount of the then outstanding Debentures shall be deemed to be converted into Common Shares at the then applicable Conversion Price; (ii) all accrued and unpaid interest to but excluding the Forced Conversion Date (less any tax required by law to be deducted or withheld) shall become payable to the Debentureholders; and (iii) the registered holders shall be entered in the books of the Corporation as at the Forced Conversion Date as the holder of the number of Common Shares, as applicable, into which the Initial Debentures held by them are convertible. Upon the surrender of Debenture Certificates to the Trustee at its principal office in the City of Toronto, Ontario by the Debentureholders, or in the case of Uncertificated Debentures, the surrender of interests in the Debentures through the Depository's non-certificated system, the Corporation shall deliver to the Debentureholders certificates for the Common Shares or deposit Common Shares through the Depository's non-certificated system, as applicable, for the Common Shares into which the Debentures held by them have been converted. For greater certainty, notwithstanding the delivery by the Corporation of a Forced Conversion Notice, a holder of Initial Debentures may convert such Initial Debentures in whole or in part at any time until 5:00 p.m. (Eastern Time) on the Business Day prior to the Forced Conversion Date.

## 6.6 Corporation to Reserve Common Shares

The Corporation covenants with the Trustee that it will at all times reserve and keep available out of its authorized Common Shares (if the number thereof is or becomes limited), solely for the purpose of issue upon conversion of Debentures as in this Article 6 provided, and conditionally allot to Debentureholders who may exercise their conversion rights hereunder, such number of Common Shares as shall then be issuable upon the conversion of all outstanding Debentures. The Corporation covenants with the Trustee that all Common Shares which shall be so issuable shall be duly and validly issued as fully-paid and non-assessable.

## **6.7 Cancellation of Converted Debentures**

Subject to the provisions of Section 6.2 as to Debentures converted in part, all Debentures converted in whole or in part under the provisions of this Article 6 shall be forthwith delivered to and cancelled by the Trustee and no Debenture shall be issued in substitution for those converted.

## **6.8 Certificate as to Adjustment**

The Corporation shall from time to time immediately after the occurrence of any event which requires an adjustment or readjustment as provided in Section 6.3, deliver an Officer's Certificate to the Trustee specifying the nature of the event requiring the same and the amount of the adjustment necessitated thereby and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate and the amount of the adjustment specified therein shall, if requested by the Trustee, be verified by advice of a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation) and shall be conclusive and binding on all parties in interest. When so approved, the Corporation shall forthwith give notice to the Debentureholders in the manner provided in Section 13.2 specifying the event requiring such adjustment or readjustment and the results thereof, including the resulting Conversion Price; provided that, if the Corporation has given notice under Section 6.9 covering all the relevant facts in respect of such event and if the Trustee approves, no such notice need be given under this Section 6.8.

## **6.9 Notice of Special Matters**

6.9.1 The Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 13.2 of its intention to fix a record date for any event referred to in Section 6.3(a), Section 6.3(b), Section 6.3(c), Section 6.3(d) or Section 6.3(e) which may give rise to an adjustment in the Conversion Price, and, in each case, such notice shall specify the particulars of such event and the record date and the effective date for such event; provided that the Corporation shall only be required to specify in such notice such particulars of such event as shall have been fixed and determined on the date on which such notice is given. Such notice shall be given not less than 14 days in each case prior to such applicable record date.

6.9.2 In addition, the Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 13.2 at least 30 days prior to the (i) effective date of any transaction referred to in Section 6.3(d) stating the consideration into which the Debentures will be convertible after the effective date of such transaction, and (ii) Expiration Date of any transaction referred to in Section 6.3(f) stating the consideration paid per Common Share in such transaction.

## **6.10 Protection of Trustee**

The Trustee:

- (a) shall not at any time be under any duty or responsibility to any Debentureholder to determine whether any facts exist which may require any adjustment in the Conversion Price or any other adjustment under Article 6, or with respect to the

nature or extent of any such adjustment when made, or with respect to the method employed in making the same;

- (b) shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any shares or other securities or property which may at any time be issued or delivered upon the conversion of any Debenture;
- (c) shall not be responsible for any failure of the Corporation to make any cash payment or to issue, transfer or deliver Common Shares or share certificates upon the surrender of any Debenture for the purpose of conversion, or to comply with any of the covenants contained in this Article 6;
- (d) shall not be appointed receiver or receiver manager of the assets of the Corporation;
- (e) shall not incur any liability or responsibility whatever or be in any way responsible for the consequence of any breach on the part of the Corporation of any of the covenants herein contained or of any acts of any directors, officers, employees, trustees or servants of the Corporation; and
- (f) shall have no obligation to see to or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental hereto.

## **ARTICLE 7 COVENANTS OF THE CORPORATION**

The Corporation hereby covenants and agrees with the Trustee for the benefit of the Trustee and the Debentureholders, that so long as any Debentures remain outstanding:

### **7.1 To Pay Principal, Premium (if any) and Interest**

The Corporation will duly and punctually pay or cause to be paid to every Debentureholder the principal of, premium (if any) and interest accrued on the Debentures of which it is the holder on the dates, at the places and in the manner mentioned herein and in the Debentures.

### **7.2 To Pay Trustee's Remuneration**

The Corporation will pay the Trustee reasonable remuneration for its services as Trustee hereunder and will repay to the Trustee on demand all monies which shall have been paid by the Trustee in connection with the execution of the trusts hereby created including all reasonable expenses and disbursements made in the performance of its duties hereunder (including the reasonable compensation and disbursements of its counsel and all other assistants and advisors not regularly in its employ), and such monies including the Trustee's remuneration, shall be payable out of any funds coming into the possession of the Trustee in priority to payment of any principal of the Debentures or interest or premium thereon. Such remuneration shall continue to be payable until the trusts hereof be finally wound up and whether or not the trusts of this Indenture shall be in the course of administration by or under the direction of a court of competent jurisdiction.

### **7.3 To Give Notice of Default**

The Corporation shall notify the Trustee and the Debentureholders immediately upon obtaining knowledge of any default or Event of Default hereunder.

### **7.4 Preservation of Existence, etc.**

Subject to the express provisions hereof, the Corporation will carry on and conduct its activities, and cause its Subsidiaries to carry on and conduct their businesses, in a business-like manner and in accordance with good business practices, and, subject to the express provisions hereof, it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights; provided that the foregoing covenant shall not prevent or restrict the Corporation from completing a transaction to which Article 10 would apply if carried out in accordance with Article 10.

### **7.5 Keeping of Books**

The Corporation will keep or cause to be kept proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Corporation in accordance with generally accepted accounting principles.

### **7.6 Annual Certificate of Compliance**

The Corporation shall deliver to the Trustee, within 120 days after the end of each calendar year, (and at any reasonable time upon demand by the Trustee) an Officer's Certificate as to the knowledge of such officers of the Corporation who execute the Officer's Certificate of the Corporation's compliance with all conditions and covenants in this Indenture certifying that after reasonable investigation and inquiry, the Corporation has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which would, with the giving of notice, lapse of time or otherwise, constitute an Event of Default hereunder, or if such is not the case, setting forth with reasonable particulars the circumstances of any failure to comply and steps taken or proposed to be taken to eliminate such circumstances and remedy such Event of Default, as the case may be.

### **7.7 Performance of Covenants by Trustee**

If the Corporation shall fail to perform any of its covenants contained in this Indenture, the Trustee may notify the Debentureholders of such failure on the part of the Corporation or may itself perform any of the covenants capable of being performed by it, but shall be under no obligation to do so or to notify the Debentureholders. All sums so expended or advanced by the Trustee shall be repayable as provided in Section 7.2. No such performance, expenditure or advance by the Trustee shall be deemed to relieve the Corporation of any default hereunder.

### **7.8 Maintain Listing**

The Corporation will use reasonable commercial efforts to maintain the listing of the Common Shares on the CSE, or such other principal exchange in Canada on which the Common Shares are listed, and to maintain the Corporation's status as a "reporting issuer" not in default of the requirements of the Applicable Securities Legislation; provided that the foregoing covenant shall not prevent or restrict the Corporation from carrying out a transaction to which Article 10 would apply if carried out in compliance with Article 10 even if as a result of such transaction the

Corporation ceases to be a “reporting issuer” in all or any of the provinces of Canada or the Common Shares cease to be listed on the CSE or any other stock exchange.

#### **7.9 No Dividends on Common Shares if Event of Default**

The Corporation shall not declare or pay any dividend to the holders of its issued and outstanding Common Shares after the occurrence of an Event of Default unless and until such default shall have been cured or waived or shall have ceased to exist.

#### **7.10 Withholding Matters**

All payments made by or on behalf of the Corporation under or with respect to the Debentures (including, without limitation, any penalties, interest and other liabilities related thereto) will be made free and clear of and without withholding, or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge (including, without limitation, penalties, interest and other liabilities related hereto) imposed or levied by or on behalf of the Government of Canada or the United States or elsewhere, or of any province or territory thereof or by any authority or agency therein or thereof having power to tax (“**Withholding Taxes**”), unless the Corporation is required by law or the interpretation or administration thereof, to withhold or deduct any amounts for, or on account of Withholding Taxes. If the Corporation is so required to withhold or deduct any amount for, or on account of, Withholding Taxes from any payment made under or with respect to the Debentures, the Corporation will pay to each holder as additional interest such additional amounts (“**Additional Amounts**”) as may be necessary so that the net amount received by each holder after such withholding or deduction (and after deducting any taxes on such Additional Amounts) will not be less than the amount the holder would have received if such taxes had not been withheld or deducted.

The Corporation shall provide the Trustee with copies of receipts or other communications relating to the remittance of such withheld amount or the filing of any forms received from such government authority or agency promptly after receipt thereof.

#### **7.11 SEC Reporting Status**

The Corporation confirms that, as at the date of execution of this Indenture, it does not have a class of securities registered pursuant to Section 12 of the U.S. Securities Exchange Act or have a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act.

The Corporation covenants that in the event that (i) any class of its securities shall become registered pursuant to Section 12 of the U.S. Securities Exchange Act or the Corporation shall incur a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act, or (ii) any such registration or reporting obligation shall be terminated by the Corporation in accordance with the U.S. Securities Exchange Act, the Corporation shall promptly deliver to the Trustee an Officer’s Certificate notifying the Trustee of such registration or termination or such reporting obligation and such other information as the Trustee may reasonably require at the applicable time. The Corporation acknowledges that the Trustee is relying upon the foregoing confirmation and covenant in order to meet certain obligations imposed by the U.S. Securities and Exchange Commission on the Trustee with respect to clients of the Trustee that are subject to the reporting requirements of the U.S. Securities Exchange Act.

## 7.12 Announcement of Forced Conversion

The Corporation shall, concurrently with delivering a Forced Conversion Notice in accordance with Section 6.5, issue a news release announcing that the Corporation has exercised its right to convert the Initial Debentures pursuant to Section 6.5 and such other particulars as set out in the Forced Conversion Notice.

## 7.13 Compliance by Subsidiaries

The Corporation shall cause all of its subsidiaries to comply with the provisions of this Article 7 as if such subsidiaries were expressly referred to in such provisions in replacement of references to the Corporation, mutatis mutandis.

# ARTICLE 8 DEFAULT

## 8.1 Event of Default

8.1.1 Each of the following events constitutes, and is herein sometimes referred to as, an “**Event of Default**”:

- (a) failure to pay interest on the Debentures when due, which default continues for 10 days;
- (b) failure to pay principal or premium (whether by way of payment of cash or delivery of Common Shares, as applicable), if any, when due on the Debentures whether at maturity, upon redemption or a Change of Control, by declaration or otherwise;
- (c) default in the delivery, when due, of any Common Shares or other consideration, payable on conversion with respect to the Debentures, which default continues for 15 days;
- (d) default in the observance or performance of any covenant or condition of this Indenture by the Corporation and the failure to cure (or obtain a waiver for) such default for a period of 30 days after notice in writing has been given by the Trustee or from holders of not less than 25% in aggregate principal amount of the Debentures then outstanding to the Corporation specifying such default and requiring the Corporation to rectify such default or obtain a waiver for same;
- (e) if a decree or order of a court having jurisdiction is entered adjudging the Corporation or any Material Subsidiary as bankrupt or insolvent under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or issuing sequestration or process of execution against, or against any substantial part of, the property of the Corporation or any Material Subsidiary, or appointing a receiver of, or of any substantial part of, the property of the Corporation or any Material Subsidiary or ordering the winding-up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of 60 days;
- (f) if the Corporation or any Material Subsidiary institutes proceedings to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or

insolvency proceedings against it under the Bankruptcy and Insolvency Act (Canada) or any other bankruptcy, insolvency or analogous laws, or consents to the filing of any such petition or to the appointment of a receiver of, or of any substantial part of, the property of the Corporation or any Material Subsidiary or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

- (g) if a resolution is passed for the winding-up or liquidation of the Corporation or any Material Subsidiary except in the course of carrying out or pursuant to a transaction in respect of which the conditions of Section 10.1 are duly observed and performed;
- (h) if, after the date of this Indenture, any proceedings with respect to the Corporation or any Material Subsidiary are taken with respect to a compromise or arrangement, with respect to creditors of the Corporation or any Material Subsidiary generally, under the applicable legislation of any jurisdiction;
- (i) if an event of default occurs or exists under any indenture, agreement or other instrument evidencing or governing indebtedness for borrowed money of the Corporation or any Material Subsidiary and as a result of such event of default (i) indebtedness for borrowed money thereunder in excess of \$500,000 (or the equivalent amount in any other currency) has become due and payable before the date it would otherwise have been due and payable or (ii) the holders of such indebtedness are entitled to commence, and have commenced, the enforcement of security they hold for such indebtedness (if any) or the exercise of any other creditors' remedies to collect such indebtedness; or
- (j) if the Corporation fails to comply with Article 10 hereof,

then: (i) in each and every such event listed above, the Trustee may, in its discretion, relying on the opinion of Counsel, but subject to the provisions of this section, and shall, upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding (or if the Event of Default shall exist only in respect of one or more series of the Debentures then outstanding, then upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures of such series then outstanding), subject to the provisions of Section 7.3, by notice in writing to the Corporation declare the principal of and interest and premium, if any, on all Debentures then outstanding and all other monies outstanding hereunder to be due and payable and the same shall thereupon forthwith become immediately due and payable (or, if the Event of Default shall exist only in respect of one or more series of the Debentures then outstanding, then the Trustee may declare due and payable the principal and interest and premium, if any, only with respect to such Debentures in respect of which there is an Event of Default) to the Trustee, and (ii) on the occurrence of an Event of Default under Section 8.1.1(e), Section 8.1.1(f) Section 8.1.1(g) or Section 8.1.1(h), the principal of and interest and premium, if any, on all Debentures then outstanding hereunder and all other monies outstanding hereunder, shall automatically without any declaration or other act on the part of the Trustee or any Debentureholder become immediately due and payable to the Trustee and, in either case, upon such amounts becoming due and payable in either (i) or (ii) above, the Corporation shall forthwith pay to the Trustee for the benefit of the Debentureholders such principal, accrued and unpaid interest and premium, if any, and interest on amounts in default on

such Debenture and all other monies outstanding hereunder, together with subsequent interest at the rate borne by the Debentures on such principal, interest, premium and such other monies from the date of such declaration or event until payment is received by the Trustee, such subsequent interest to be payable at the times and places and in the manner mentioned in and according to the tenor of the Debentures. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any monies so received by the Trustee shall be applied in the manner provided in Section 8.6.

- 8.1.2 For greater certainty, for the purposes of this Section 8.1, a series of Debentures shall be in default in respect of an Event of Default if such Event of Default relates to a default in the payment of principal, premium, if any, or interest on the Debentures of such series in which case references to Debentures in this Section 8.1 refer to Debentures of that particular series.
- 8.1.3 For purposes of this Article 8, where the Event of Default refers to an Event of Default with respect to a particular series of Debentures as described in this Section 8.1, then this Article 8 shall apply mutatis mutandis to the Debentures of such series and references in this Article 8 to the Debentures shall mean Debentures of the particular series and references to the Debentureholders shall refer to the Debentureholders of the particular series, as applicable.

## **8.2 Notice of Events of Default**

If an Event of Default shall occur and be continuing the Trustee shall, within 15 days after it receives written notice of the occurrence of such Event of Default, give notice of such Event of Default to the Debentureholders in the manner provided in Section 13.2, provided that notwithstanding the foregoing, unless the Trustee shall have been requested to do so by the holders of at least 25% of the principal amount of the Debentures then outstanding, the Trustee shall not be required to give such notice if the Trustee in good faith, relying on the opinion of Counsel shall have determined that the withholding of such notice is in the best interests of the Debentureholders and shall have so advised the Corporation in writing.

When notice of the occurrence of an Event of Default has been given and the Event of Default is thereafter cured, notice that the Event of Default is no longer continuing shall be given by the Trustee to the Debentureholders within 15 days after the Trustee becomes aware the Event of Default has been cured.

## **8.3 Waiver of Default**

- 8.3.1 Upon the happening of any Event of Default hereunder:
- (a) the holders of the Debentures shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by requisition in writing by the holders of more than 50% of the principal amount of Debentures then outstanding, to instruct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 8.1 and the Trustee shall thereupon waive the Event of Default and cancel such declaration, or either, upon such terms and conditions as shall be prescribed in such requisition; provided that notwithstanding the foregoing if the Event of Default has occurred by reason of the non-observance or non-performance by the Corporation

of any covenant applicable only to one or more series of Debentures, then the holders of more than 50% of the principal amount of the outstanding Debentures of that series shall be entitled to exercise the foregoing power and the Trustee shall so act and it shall not be necessary to obtain a waiver from the holders of any other series of Debentures; and

- (b) the Trustee, so long as it has not become bound to declare the principal and interest on the Debentures then outstanding to be due and payable, or to obtain or enforce payment of the same, shall have power to waive any Event of Default if, in the Trustee's opinion, the same shall have been cured or adequate satisfaction made therefor, and in such event to cancel any such declaration theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may deem advisable.

8.3.2 No such act or omission either of the Trustee or of the Debentureholders shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

#### **8.4 Enforcement by the Trustee**

8.4.1 Subject to the provisions of Section 8.3 and to the provisions of any Extraordinary Resolution that may be passed by the Debentureholders, if the Corporation shall fail to pay to the Trustee, forthwith after the same shall have been declared to be due and payable under Section 8.1, the principal of and interest on all Debentures then outstanding, together with any other amounts due hereunder, the Trustee may in its discretion and shall upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding and upon being funded and indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as trustee hereunder to obtain or enforce payment of such principal and interest on all the Debentures then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, or if the Trustee shall act without such request, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

8.4.2 The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for the holders of the Debentures, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Debentures allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Debentures by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Debentures with authority to make and file in the respective names of the holders of the Debentures or on behalf of the holders of the Debentures as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the holders of the Debentures themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to

execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such holders of the Debentures, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the holders of the Debentures against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims; provided, however, that subject to Section 8.3, nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Debentureholder.

- 8.4.3 The Trustee shall also have the power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Debentureholders.
- 8.4.4 All rights of action hereunder may be enforced by the Trustee without the possession of any of the Debentures or the production thereof on the trial or other proceedings relating thereto.
- 8.4.5 Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the holders of the Debentures subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Debentures, and it shall not be necessary to make any holders of the Debentures parties to any such proceeding.

## **8.5 No Suits by Debentureholders**

Subject to any rights or remedies available to the Trustee and the Debentureholders under applicable law or otherwise, no holder of any Debenture shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal or of interest on the Debentures or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder, unless: (a) such holder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder; and (b) the Debentureholders by Extraordinary Resolution or by written instrument signed by the holders of at least 25% in principal amount of the Debentures then outstanding shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for such purpose; and (c) the Debentureholders or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds and security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; (d) the Trustee shall have failed to act within a reasonable time after such notification, request and receipt of such funding, security and indemnity; and (e) no direction inconsistent with such request has been received by the Trustee from holders of a majority in principal amount of the outstanding Debentures, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions

precedent to any such proceeding or for any other remedy hereunder by or on behalf of the holder of any Debentures.

## **8.6 Application of Monies by Trustee**

8.6.1 Except as herein otherwise expressly provided, any monies received by the Trustee from the Corporation pursuant to the foregoing provisions of this Article 8, or as a result of legal or other proceedings or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee of its compensation, costs, charges, expenses, borrowings, advances or other monies furnished or provided by or at the instance of the Trustee in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, but subject as hereinafter in this Section 8.6 provided, in payment, ratably and proportionately to the holders of Debentures, of the principal of and premium (if any) and accrued and unpaid interest and interest on amounts in default on the Debentures which shall then be outstanding in the priority of principal first and then premium and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by Extraordinary Resolution and in that case in such order or priority as between principal, premium (if any) and interest as may be directed by such resolution; and
- (c) third, in payment of the surplus, if any, of such monies to the Corporation or its assigns;

provided, however, that no payment shall be made pursuant to clause (b) above in respect of the principal, premium or interest on any Debenture held, directly or indirectly, by or for the benefit of the Corporation or any Subsidiary (other than any Debenture pledged for value and in good faith to a Person other than the Corporation or any Subsidiary but only to the extent of such Person's interest therein) except subject to the prior payment in full of the principal, premium (if any) and interest (if any) on all Debentures which are not so held.

8.6.2 The Trustee shall not be bound to apply or make any partial or interim payment of any monies coming into its hands if the amount so received by it, after reserving thereout such amount as the Trustee may think necessary to provide for the payments mentioned in Section 8.6.1(a), is insufficient to make a distribution of at least 2% of the aggregate principal amount of the outstanding Debentures, but it may retain the money so received by it and invest or deposit the same as provided in Section 14.8 until the money or the investments representing the same, with the income derived therefrom, together with any other monies for the time being under its control shall be sufficient for the said purpose or until it shall consider it advisable to apply the same in the manner hereinbefore set forth. The foregoing shall, however, not apply to a final payment in distribution hereunder.

## **8.7 Notice of Payment by Trustee**

Not less than 15 days' notice shall be given in the manner provided in Section 13.2 by the Trustee to the Debentureholders of any payment to be made under this Article 8. Such notice shall state

the time when and place where such payment is to be made and also the liability under this Indenture to which it is to be applied. After the day so fixed, unless payment shall have been duly demanded and have been refused, the Debentureholders will be entitled to interest only on the balance (if any) of the principal monies, premium (if any) and interest due (if any) to them, respectively, on the Debentures, after deduction of the respective amounts payable in respect thereof on the day so fixed.

#### **8.8 Trustee May Demand Production of Debentures**

The Trustee shall have the right to demand production of the Debentures in respect of which any payment of principal, interest or premium required by this Article 8 is made and may cause to be endorsed on the same a memorandum of the amount so paid and the date of payment, but the Trustee may, in its discretion, dispense with such production and endorsement, subject to, if requested by the Trustee, such indemnity being given to it and to the Corporation as the Trustee shall deem sufficient.

#### **8.9 Remedies Cumulative**

No remedy herein conferred upon or reserved to the Trustee, or upon or to the holders of Debentures is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute.

#### **8.10 Immunity of Directors, Officers and Others**

The Debentureholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future officer, director or employee of the Corporation or holder of Common Shares of the Corporation or of any successor for the payment of the principal of or premium or interest on any of the Debentures or on any covenant, agreement, representation or warranty by the Corporation contained herein or in the Debentures.

#### **8.11 Trustee Appointed Attorney**

The Corporation hereby irrevocably appoints the Trustee to be the attorney in its name and on its behalf to execute and do any deeds, conveyances, assignments, assurances and things which such Person ought to execute and do, and has not executed or done, under the covenants and provisions contained herein and generally to use the name of such Person in the exercise of all or any of the powers hereby conferred on the Trustee. This power of attorney is coupled with an interest and will survive any winding-up, dissolution, insolvency, bankruptcy, reorganization, arrangement, composition, termination or similar proceedings involving or affecting the Corporation. This power of attorney is granted on the date hereof, but will only be exercisable by the Trustee following the occurrence and during the continuance of an Event of Default.

### **ARTICLE 9 SATISFACTION AND DISCHARGE**

#### **9.1 Cancellation and Destruction**

All Debentures shall forthwith after payment thereof be delivered to the Trustee and cancelled by it. Upon cancellation of any Debenture by the Trustee, if required by the Corporation, the Trustee

shall furnish to the Corporation a cancellation certificate setting out the designating numbers of the Debentures so cancelled.

## **9.2 Non-Presentation of Debentures**

In case the holder of any Debenture shall fail to present the same for payment on the date on which the principal of, premium (if any) or the interest thereon or represented thereby becomes payable either at maturity or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall be entitled to pay or deliver to the Trustee and direct it to set aside; or
- (b) in respect of monies in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Corporation shall be entitled to direct the Trustee to set aside; or
- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside;

the monies in trust to be paid to the holder of such Debenture upon due presentation or surrender thereof in accordance with the provisions of this Indenture; and thereupon the principal of, premium (if any) or the interest payable on, or represented by each Debenture in respect whereof such monies have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving delivery and payment of the monies so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 9.3.

## **9.3 Repayment of Unclaimed Monies**

Subject to applicable law, any monies set aside under Section 9.2 and not claimed by and paid to holders of Debentures as provided in Section 9.2 within six years after the date of such setting aside shall be repaid and delivered to the Corporation by the Trustee, upon receipt of written direction from the Corporation, and thereupon the Trustee shall be released from all further liability with respect to such monies and thereafter the holders of the Debentures in respect of which such monies were so repaid to the Corporation shall have no rights in respect thereof except to obtain payment and delivery of the monies from the Corporation subject to any limitation provided by the laws of the Province of Ontario. Notwithstanding the foregoing, the Trustee will pay any remaining funds prior to the expiry of six years after the setting aside described in Section 8.2 to the Corporation upon receipt from the Corporation, of an unconditional letter of credit from a Canadian chartered bank in an amount equal to or in excess of the amount of the remaining funds. If the remaining funds are paid to the Corporation prior to the expiry of six years after such setting aside, the Corporation shall reimburse the Trustee for any amounts so set aside which are required to be paid by the Trustee to a holder of a Debenture after the date of such payment of the remaining funds to the Corporation but prior to six years after such setting aside.

## **9.4 Discharge**

The Trustee shall at the written request and at the expense of the Corporation release and discharge this Indenture and execute and deliver such instruments as it shall be advised by Counsel are requisite for that purpose and to release the Corporation from its covenants herein

contained (other than the provisions relating to the indemnification of the Trustee), upon proof being given to the reasonable satisfaction of the Trustee that the principal of, premium (if any) and interest (including interest on amounts in default, if any), on all the Debentures and all other monies payable hereunder including the remuneration of the Trustee have been paid or satisfied or that all the Debentures having matured or having been duly called for redemption, payment of the principal of and interest (including interest on amounts in default, if any) on such Debentures and of all other monies payable hereunder has been duly and effectually provided for in accordance with the provisions hereof.

## **9.5 Satisfaction**

9.5.1 The Corporation shall be deemed to have fully paid, satisfied and discharged all of the outstanding Debentures of any series (the “**Defeasance Option**”) and the Trustee, at the expense of the Corporation, shall execute and deliver proper instruments acknowledging the full payment, satisfaction and discharge of such Debentures, when, with respect to all of the outstanding Debentures or all of the outstanding Debentures of any series, as applicable:

- (a) the Corporation has deposited or caused to be deposited with the Trustee as trust funds or property in trust for the purpose of making payment on such Debentures, an amount in money sufficient to pay, satisfy and discharge the entire amount of principal of, premium (if any) and interest, if any, to maturity, or any repayment date, or any Change of Control Purchase Date, or upon conversion or otherwise as the case may be, of such Debentures;
- (b) the Corporation has deposited or caused to be deposited with the Trustee as trust property in trust for the purpose of making payment on such Debentures:
  - (i) if the Debentures are issued in Canadian dollars, such amount in Canadian dollars of direct obligations of, or obligations the principal and interest of which are guaranteed by, the Government of Canada; or
  - (ii) if the Debentures are issued in a currency or currency unit other than Canadian dollars, cash in the currency or currency unit in which the Debentures are payable and/or such amount in such currency or currency unit of direct obligations of, or obligations the principal and interest of which are guaranteed by, the Government of Canada or the government that issued the currency or currency unit in which the Debentures are payable;

as will be sufficient to pay and discharge the entire amount of principal of, premium (if any) and accrued and unpaid interest to maturity or any repayment date, and premium, if any, as the case may be, of all such Debentures; or

- (c) all Debentures authenticated and delivered (other than (A) Debentures which have been destroyed, lost or stolen and which have been replaced or paid and (B) Debentures for whose payment has been deposited in trust and thereafter repaid to the Corporation as provided in Section 9.3) have been delivered to the Trustee for cancellation;

so long as in any such event:

- (d) the Corporation has paid, caused to be paid or made provisions to the satisfaction of the Trustee for the payment of all other sums payable or which may be payable with respect to all of such Debentures (together with all remuneration and expenses of the Trustee to carry out its duties under this Indenture in respect of the Debentures), and payment of present taxes owing and any taxes arising with respect to all deposited funds or other provision for payment in respect of the Debentures;
- (e) the Trustee shall have received an opinion or opinions of Counsel that Debentureholders will not be subject to any additional taxes as a result of the exercise by the Corporation of the Defeasance Option and that such Holders will be subject to taxes, if any, including those in respect of income (including interest and taxable capital gains), on the same amount, in the same manner and at the same time or times as would have been the case if the Defeasance Option had not been exercised in respect of such Debentures;
- (f) the Corporation shall have delivered to the Trustee an Officers' Certificate stating that the deposit referred to in this Section 9.5 was not made by the Corporation with the intent of preferring the Debentureholders over the other creditors of the Corporation or with the intent of defeating, hindering, delaying or defrauding creditors of the Corporation or others;
- (g) no Event of Default shall have occurred and be continuing on the date of the deposit referred to in this Section 9.5;
- (h) such release does not result in a breach or violation of, or constitute a default under, any material agreement or instrument to which the Corporation is a party or by which the Corporation is bound; and
- (i) the Corporation has delivered to the Trustee an Officer's Certificate and an opinion of Counsel stating that all conditions precedent herein provided relating to the payment, satisfaction and discharge of all such Debentures have been complied with.

Any deposits with the Trustee referred to in this Section 8.5 shall be irrevocable, subject to Section 8.6, and shall be made in accordance with the terms of this Indenture or otherwise under the terms of an escrow and/or trust agreement in form and substance satisfactory to the Trustee and which provides for the due and punctual payment of the principal of, premium (if any) and interest on the Debentures being satisfied.

- 9.5.2 Upon the satisfaction of the conditions set forth in this Section 8.5 with respect to all the outstanding Debentures, or all the outstanding Debentures of any series, as applicable, the terms and conditions of the Debentures, including the terms and conditions with respect thereto set forth in this Indenture (other than those contained in Article 2 and Article 4 and the provisions of Article 1 pertaining to Article 2 and Article 4) shall no longer be binding upon or applicable to the Corporation.

- 9.5.3 Any funds or obligations deposited with the Trustee pursuant to this Section 9.5 shall be denominated in the currency or denomination of the Debentures in respect of which such deposit is made.
- 9.5.4 If the Trustee is unable to apply any money or securities in accordance with this Section 9.5 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Corporation's obligations under this Indenture and the affected Debentures shall be revived and reinstated as though no money or securities had been deposited pursuant to this Section 9.5 until such time as the Trustee is permitted to apply all such money or securities in accordance with this Section 9.5, provided that if the Corporation has made any payment in respect of principal of, premium (if any) or interest on Debentures or, as applicable, other amounts because of the reinstatement of its obligations, the Corporation shall be subrogated to the rights of the holders of such Debentures to receive such payment from the money or securities held by the Trustee.

## **9.6 Continuance of Rights, Duties and Obligations**

- 9.6.1 Where trust funds or trust property have been deposited pursuant to Section 9.5, the holders of Debentures and the Corporation shall continue to have and be subject to their respective rights, duties and obligations under Article 2 and Article 4.
- 9.6.2 In the event that, after the deposit of trust funds or trust property pursuant to Section 9.5 in respect of a series of Debentures (the "**Defeased Debentures**"), any holder of any of the Defeased Debentures from time to time converts its Debentures to Common Shares or other securities of the Corporation in accordance with Section 2.4 (in respect of Initial Debentures or the comparable provision of any other series of Debentures), Article 5 or any other provision of this Indenture, the Trustee shall upon receipt of a Written Direction of the Corporation return to the Corporation from time to time the proportionate amount of the trust funds or other trust property deposited with the Trustee pursuant to Section 9.5 in respect of the Defeased Debentures which is applicable to the Defeased Debentures so converted (which amount shall be based on the applicable principal amount of the Defeased Debentures being converted in relation to the aggregate outstanding principal amount of all the Defeased Debentures).
- 9.6.3 In the event that, after the deposit of trust funds or trust property pursuant to Section 9.5, the Corporation is required to purchase any outstanding Debentures pursuant to Section 2.4.11 (in respect of Initial Debentures or the comparable provision of any other series of Debentures), in relation to Initial Debentures or to make an offer to purchase Debentures pursuant to any other similar provisions relating to any other series of Debentures, the Corporation shall be entitled to use any trust money or trust property deposited with the Trustee pursuant to Section 9.5 for the purpose of paying to any holders of Defeased Debentures who have accepted any such offer of the Corporation the Change of Control Purchase Price payable to such holders in respect of such Change of Control Purchase Option in respect of Initial Debentures (or the total offer price payable in respect of an offer relating to any other series of Debentures). Upon receipt of a Written Direction of the Corporation, the Trustee shall be entitled to pay to such holder from such trust money or trust property deposited with the Trustee pursuant to Section 9.5 in respect of the Defeased Debentures which is applicable to the Defeased Debentures held by such holders who have accepted any such offer to the Corporation (which amount shall be based on the applicable principal amount of the Defeased Debentures held by accepting

offerees in relation to the aggregate outstanding principal amount of all the Defeased Debentures).

## **ARTICLE 10 SUCCESSORS**

### **10.1 Corporation may Consolidate, etc., Only on Certain Terms**

10.1.1 The Corporation may not, without the consent of the holders of the Debentures by Extraordinary Resolution hereunder, consolidate with or amalgamate or merge with or into any Person (other than a directly or indirectly wholly-owned Subsidiary of the Corporation) or sell, convey, transfer or lease all or substantially all of the properties and assets of the Corporation to another Person (other than a directly or indirectly wholly-owned Subsidiary of the Corporation) unless:

- (a) the Person formed by such consolidation or into which the Corporation is amalgamated or merged, or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the properties and assets of the Corporation is a corporation, organized and existing under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof and such corporation (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the obligations of the Corporation under the Debentures and this Indenture and the performance or observance of every covenant and provision of this Indenture and the Debentures required on the part of the Corporation to be performed or observed and the conversion rights shall be provided for in accordance with Article 6, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) formed by such consolidation or into which the Corporation shall have been merged or by the Person which shall have acquired the Corporation's assets;
- (b) after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and
- (c) if the Corporation or the continuing corporation resulting from the amalgamation or merger of the Corporation with another Person under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof will not be the resulting, continuing or surviving corporation, the Corporation shall have, at or prior to the effective date of such consolidation, amalgamation, merger or sale, conveyance, transfer or lease, delivered to the Trustee an Officer's Certificate and an opinion of Counsel, each stating that such consolidation, merger or transfer complies with this Article 10 and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article 10, and that all conditions precedent herein provided for relating to such transaction have been complied with.

10.1.2 For purposes of the foregoing, the sale, conveyance, transfer or lease (in a single transaction or a series of related transactions) of the properties or assets of one or more Subsidiaries of the Corporation (other than to the Corporation or another wholly-owned Subsidiary of the Corporation), which, if such properties or assets were directly owned by the Corporation, would constitute all or substantially all of the properties and assets of the Corporation and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Corporation.

## 10.2 Successor Substituted

Upon any consolidation of the Corporation with, or amalgamation or merger of the Corporation into, any other Person or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Corporation and its Subsidiaries, taken as a whole, in accordance with Section 10.1, the successor Person formed by such consolidation or into which the Corporation is amalgamated or merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Corporation under this Indenture with the same effect as if such successor Person had been named as the Corporation herein, and thereafter, except in the case of a lease, and except for obligations the predecessor Person may have under a supplemental indenture entered into pursuant to Section 10.1.1(c), the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debentures.

## ARTICLE 11 COMPULSORY ACQUISITION

### 11.1 Definitions In this Article:

11.1.1 **"Affiliate"** and **"Associate"** shall have their respective meanings set forth in the *Securities Act* (Ontario);

11.1.2 **"Dissenting Debentureholders"** means a Debentureholder who does not accept an Offer referred to in Section 11.2 and includes any assignee of the Debenture of a Debentureholder to whom such an Offer is made, whether or not such assignee is recognized under this Indenture;

11.1.3 **"Offer"** means an offer to acquire outstanding Debentures, which is a takeover bid for Debentures within the meaning ascribed thereto in NI 62-104 and the *Securities Act* (Ontario), whereas of the date of the offer to acquire, the Debentures that are subject to the offer to acquire, together with the Offeror's Debentures, constitute in the aggregate 20% or more of the outstanding principal amount of the Debentures;

11.1.4 **"offer to acquire"** includes an acceptance of an offer to sell;

11.1.5 **"Offeror"** means a Person, or two or more Persons acting jointly or in concert, who make an Offer to acquire Debentures;

11.1.6 **"Offeror's Debentures"** means Debentures beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any Affiliate or Associate of the Offeror or any Person or company acting jointly or in concert with the Offeror; and

11.1.7 **“Offeror’s Notice”** means the notice described in Section 11.3.

## 11.2 Offer for Debentures

If an Offer for all of the outstanding Debentures (other than Debentures held by or on behalf of the Offeror or an Affiliate or Associate of the Offeror) is made and:

- (a) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Debentureholders representing at least 90% of the outstanding principal amount of the Debentures, other than the Offeror’s Debentures;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Debentures of the Debentureholders who accepted the Offer;
- (c) the Offeror complies with Section 11.3 and Section 11.5; and
- (d) the Offer complies with applicable securities laws (including any applicable requirements of the U.S. Securities Exchange Act, U.S. Securities Act and state securities laws).

the Offeror is entitled to acquire, and the Dissenting Debentureholders are required to sell to the Offeror, the Debentures held by the Dissenting Debentureholder(s) for the same consideration per Debenture payable or paid, as the case may be, under the Offer.

## 11.3 Offeror’s Notice to Dissenting Shareholders

Where an Offeror is entitled to acquire Debentures held by Dissenting Debentureholders pursuant to Section 11.2 and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the **“Offeror’s Notice”**) to each Dissenting Debentureholder stating that:

- (a) Debentureholders holding at least 90% of the principal amount of all outstanding Debentures, other than Offeror’s Debentures, have accepted the Offer;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Debentures of the Debentureholders who accepted the Offer;
- (c) Dissenting Debentureholders must transfer their respective Debentures to the Offeror on the terms on which the Offeror acquired the Debentures of the Debentureholders who accepted the Offer within 21 days after the date of the sending of the Offeror’s Notice; and
- (d) Dissenting Debentureholders must send their respective Debenture Certificate(s) to the Trustee within 21 days after the date of the sending of the Offeror’s Notice.

## 11.4 Delivery of Debenture Certificates

A Dissenting Debentureholder to whom an Offeror’s Notice is sent pursuant to Section 11.3 shall, within 21 days after the sending of the Offeror’s Notice, send its Debenture Certificate(s) to the Trustee duly endorsed for transfer.

### **11.5 Payment of Consideration to Trustee**

Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 10.3, the Offeror shall pay or transfer to the Trustee, or to such other Person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Debentureholders pursuant to Section 11.2. The acquisition by the Offeror of all Debentures held by all Dissenting Debentureholders shall be effective as of the time of such payment or transfer.

### **11.6 Consideration to be held in Trust**

The Trustee, or the Person directed by the Trustee, shall hold in trust for the Dissenting Debentureholders the cash or other consideration they or it receives under Section 11.5. The Trustee, or such Persons, shall deposit cash in a separate account in a Canadian chartered bank, or other body corporate, any of whose deposits are insured by the Canada Deposit Insurance Corporation, and shall place other consideration in its vault or in the custody of a Canadian chartered bank or such other body corporate.

### **11.7 Completion of Transfer of Debentures to Offeror**

Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 11.3 the Trustee, if the Offeror has complied with Section 11.5, shall:

- (a) do all acts and things and execute and cause to be executed all instruments as in the opinion of Counsel may be necessary or desirable to cause the transfer of the Debentures of the Dissenting Debentureholders to the Offeror;
- (b) send to each Dissenting Debentureholder who has complied with Section 11.4 the consideration to which such Dissenting Debentureholder is entitled under this Article 11 (net of applicable withholdings); and
- (c) send to each Dissenting Debentureholder who has not complied with Section 11.1.4 a notice stating that:
  - (i) his or her Debentures have been transferred to the Offeror;
  - (ii) the Trustee or some other Person designated in such notice are holding in trust the consideration for such Debentures; and
  - (iii) the Trustee, or such other Person, will send the consideration to such Dissenting Debentureholder as soon as possible after receiving such Dissenting Debentureholder's Debenture Certificate(s) or such other documents as the Trustee or such other Person may require in lieu thereof;

and the Trustee is hereby appointed the agent and attorney of the Dissenting Debentureholders for the purposes of giving effect to the foregoing provisions including, without limitation, the power and authority to execute such transfers as may be necessary or desirable in respect of the book-entry only registration systems of the Depository (as applicable).

## 11.8 Communication of Offer to the Corporation

An Offeror cannot make an Offer for Debentures unless, concurrent with the communication of the Offer to any Debentureholder, a copy of the Offer is provided to the Corporation.

## ARTICLE 12 MEETINGS OF DEBENTUREHOLDERS

### 12.1 Right to Convene Meeting

The Trustee or the Corporation may at any time and from time to time, and the Trustee shall, on receipt of a Written Direction of the Corporation or a written request signed by the holders of not less than 25% of the principal amount of the Debentures then outstanding and upon receiving funding and being indemnified to its reasonable satisfaction by the Corporation or by the Debentureholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Debentureholders. In the event of the Trustee failing, within 30 days after receipt of any such request and such funding and indemnity, to give notice convening a meeting, the Corporation or such Debentureholders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto, Ontario or at such other place as may be approved or determined by the Corporation.

### 12.2 Notice of Meetings

12.2.1 At least 21 days' notice of any meeting shall be given to the Debentureholders in the manner provided in Section 13.2 and a copy of such notice shall be sent by post to the Trustee, unless the meeting has been called by it. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 12. The accidental omission to give notice of a meeting to any holder of Debentures shall not invalidate any resolution passed at any such meeting. A holder may waive notice of a meeting either before or after the meeting.

12.2.2 If the business to be transacted at any meeting by Extraordinary Resolution or otherwise, or any action to be taken or power exercised by instrument in writing under Section 12.15 especially affects the rights of holders of Debentures of one or more series in a manner or to an extent differing in any material way from that in or to which the rights of holders of Debentures of any other series are affected (determined as provided in Section 12.2.3 and Section 12.2.4), then:

- (a) a reference to such fact, indicating each series of Debentures in the opinion of Counsel so especially affected (hereinafter referred to as the "**especially affected series**") shall be made in the notice of such meeting, and in any such case the meeting shall be and be deemed to be and is herein referred to as a "**Serial Meeting**"; and
- (b) the holders of Debentures of an especially affected series shall not be bound by any action taken at a Serial Meeting or by instrument in writing under Section 12.15 unless in addition to compliance with the other provisions of this Article 12:

- (i) at such Serial Meeting: (I) there are Debentureholders present in Person or by proxy and representing at least 25% in principal amount of the Debentures then outstanding of such series, subject to the provisions of this Article 12 as to quorum at adjourned meetings; and (II) the resolution is passed by the affirmative vote of the holders present at the Serial Meeting of more than 50% (or in the case of an Extraordinary Resolution not less than 66 2/3%) of the principal amount of the Debentures of such series then outstanding voted on the resolution; or
- (ii) in the case of action taken or power exercised by instrument in writing under Section 12.15, such instrument is signed in one or more counterparts by the holders of not less than 66 2/3% in principal amount of the Debentures of such series then outstanding.

12.2.3 Subject to Section 12.2.4, the determination as to whether any business to be transacted at a meeting of Debentureholders, or any action to be taken or power to be exercised by instrument in writing under Section 12.15, especially affects the rights of the Debentureholders of one or more series in a manner or to an extent differing in any material way from that in or to which it affects the rights of Debentureholders of any other series (and is therefore an especially affected series) shall be determined by an opinion of Counsel, which shall be binding on all Debentureholders, the Trustee and the Corporation for all purposes hereof.

12.2.4 A proposal:

- (a) to extend the maturity of Debentures of any particular series or to reduce the principal amount thereof, the rate of interest or redemption premium thereon or to impair any conversion right thereof;
- (b) to modify or terminate any covenant or agreement which by its terms is effective only so long as Debentures of a particular series are outstanding; or
- (c) to reduce with respect to Debentureholders of any particular series any percentage stated in this Section 12.2 or Section 12.4, Section 12.12 and Section 12.15;

shall be deemed to especially affect the rights of the Debentureholders of such series in a manner differing in a material way from that in which it affects the rights of holders of Debentures of any other series, whether or not a similar extension, reduction, modification or termination is proposed with respect to Debentures of any or all other series.

### **12.3 Chairman**

Some Person, who need not be a Debentureholder, nominated in writing by the Corporation (in case it convenes the meeting) or by the Trustee (in any other case) shall be chairman of the meeting and if no Person is so nominated, or if the Person so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, a majority of the Debentureholders present in Person or by proxy shall choose some Person present to be chairman.

## **12.4 Quorum**

Subject to the provisions of Section 12.12, at any meeting of the Debentureholders a quorum shall consist of Debentureholders present in Person or by proxy and representing at least 25% in principal amount of the outstanding Debentures and, if the meeting is a Serial Meeting, at least 25% of the Debentures then outstanding of each especially affected series. If a quorum of the Debentureholders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Debentureholders or pursuant to a request of the Debentureholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place to the extent possible and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Debentureholders present in Person or by proxy shall, subject to the provisions of Section 12.12, form a quorum and may transact the business for which the meeting was originally convened, notwithstanding that they may not represent 25% of the principal amount of the outstanding Debentures or of the Debentures then outstanding of each especially affected series. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum is present at the commencement of business.

## **12.5 Power to Adjourn**

The chairman of any meeting at which a quorum of the Debentureholders is present may, with the consent of the holders of a majority in principal amount of the Debentures represented thereat, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

## **12.6 Show of Hands**

Every question submitted to a meeting shall, subject to Section 11.7, be decided in the first place by a majority of the votes given on a show of hands except that votes on Extraordinary Resolutions shall be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Debentures, if any, held by him.

## **12.7 Poll**

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Debentureholders or proxies for Debentureholders, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Questions other than Extraordinary Resolutions shall, if a poll be taken, be decided by the votes of the holders of a majority in principal amount of the Debentures and of each especially affected series, if applicable, represented at the meeting and voted on the poll.

## **12.8 Voting**

On a show of hands every Person who is present and entitled to vote, whether as a Debentureholder or as proxy for one or more Debentureholders or both, shall have one vote. On

a poll each Debentureholder present in Person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of Debentures of which it shall then be the holder. In the case of any Debenture denominated in a currency or currency unit other than Canadian dollars, the principal amount thereof for these purposes shall be computed in Canadian dollars on the basis of the conversion of the principal amount thereof at the applicable spot buying rate of exchange for such other currency or currency unit as reported by the Bank of Canada at the close of business on the Business Day preceding the meeting. Any fractional amounts resulting from such conversion shall be rounded to the nearest \$100. A proxy need not be a Debentureholder. In the case of joint holders of a Debenture, any one of them present in Person or by proxy at the meeting may vote in the absence of the other or others but in case more than one of them be present in Person or by proxy, they shall vote together in respect of the Debentures of which they are joint holders.

## **12.9 Proxies**

A Debentureholder may be present and vote at any meeting of Debentureholders by an authorized representative. The Corporation (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Debentureholders to be present and vote at any meeting without producing their Debentures, and of enabling them to be present and vote at any such meeting by proxy and of lodging instruments appointing such proxies at some place other than the place where the meeting is to be held, may from time to time make and vary such regulations as it shall think fit providing for and governing the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and the production of the authority of any Person signing on behalf of a Debentureholder.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide and subject to Section 12.10 below, the only Persons who shall be recognized at any meeting as the holders of any Debentures, or as entitled to vote or be present at the meeting in respect thereof, shall be Debentureholders and Persons whom Debentureholders have by instrument in writing duly appointed as their proxies.

## **12.10 Persons Entitled to Attend Meetings**

The Corporation and the Trustee, by their respective officers and directors, the Auditors of the Corporation and the legal advisors of the Corporation, the Trustee and any Debentureholder may attend any meeting of the Debentureholders, but shall have no vote as such.

## **12.11 Powers Exercisable by Extraordinary Resolution**

12.11.1 In addition to the powers conferred upon them by any other provisions of this Indenture or by law, a meeting of the Debentureholders shall have the following powers exercisable from time to time by Extraordinary Resolution (subject in the case of the matters in paragraphs (a) – (d) and (l) to the prior approval of the CSE (or such other recognized stock exchange on which the Common Shares are listed for trading)):

- (a) power to authorize the Trustee to grant extensions of time for payment of any principal, premium or interest on the Debentures, whether or not the principal, premium, or interest, the payment of which is extended, is at the time due or overdue;

- (b) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Debentureholders or the Trustee (with its prior consent) against the Corporation, or against its property, whether such rights arise under this Indenture or the Debentures or otherwise;
- (c) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture or any Debenture which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any indenture supplemental hereto embodying any modification, change, addition or omission;
- (d) power to sanction any scheme for the reconstruction, reorganization or recapitalization of the Corporation or for the consolidation, amalgamation, arrangement, combination or merger of the Corporation with any other Person or for the sale, leasing, transfer or other disposition of all or substantially all of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if the provisions of Section 10.1 shall have been complied with;
- (e) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (f) power to waive, and direct the Trustee to waive, any default or Event of Default hereunder and/or cancel any declaration made by the Trustee pursuant to Section 8.1 either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (g) power to restrain any Debentureholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal, premium or interest on the Debentures, or for the execution of any trust or power hereunder;
- (h) power to direct any Debentureholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 8.5, of the costs, charges and expenses reasonably and properly incurred by such Debentureholder in connection therewith;
- (i) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;
- (j) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Debentureholders, such of the powers of the Debentureholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such

committee. Such committee shall consist of such number of Persons as shall be prescribed in the resolution appointing it and the members need not be themselves Debentureholders. Every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings and the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debentureholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

- (k) power to remove the Trustee from office and to appoint a new Trustee or Trustees provided that no such removal shall be effective unless and until a new Trustee or Trustees shall have become bound by this Indenture;
- (l) power to sanction the exchange of the Debentures for or the conversion thereof into shares, bonds, debentures or other securities or obligations of the Corporation or of any other Person formed or to be formed;
- (m) power to authorize the distribution in specie of any shares or securities received pursuant to a transaction authorized under the provisions of Section 12.11.1; and
- (n) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Debentureholders or by any committee appointed pursuant to 12.11.1(j) .

12.11.2 Notwithstanding the foregoing provisions of this Section 12.11 none of such provisions shall in any manner allow or permit any amendment, modification, abrogation or addition to the provisions of Article 5 which could reasonably be expected to detrimentally affect the rights, remedies or recourse of the priority of the Secured Creditors.

## **12.12 Meaning of “Extraordinary Resolution”**

12.12.1 The expression “**Extraordinary Resolution**” when used in this Indenture means, subject as hereinafter in this Article 12 provided, a resolution proposed to be passed as an extraordinary resolution at a meeting of Debentureholders (including an adjourned meeting) duly convened for the purpose and held in accordance with the provisions of this Article 12 at which the holders of not less than 25% of the principal amount of the Debentures then outstanding, and if the meeting is a Serial Meeting, at which holders of not less than 25% of the principal amount of the Debentures then outstanding of each especially affected series, are present in Person or by proxy and passed by the favourable votes of the holders of not less than 66 2/3% of the principal amount of the Debentures, and if the meeting is a Serial Meeting by the affirmative vote of the holders of not less than 66 2/3% of each especially affected series, in each case present or represented by proxy at the meeting and voted upon on a poll on such resolution.

12.12.2 If, at any such meeting, the holders of not less than 25% of the principal amount of the Debentures then outstanding and, if the meeting is a Serial Meeting, 25% of the principal amount of the Debentures then outstanding of each especially affected series, in each case are not present in Person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Debentureholders, shall be dissolved but in any other case it shall stand adjourned to such date, being not less than 14 nor more than 60 days later, and to such place and time as may be appointed by the chairman. Not less than 10 days' notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. At the adjourned meeting, the holders present in Person or represented by proxy, even if representing less than the original 25% quorum requirement, shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed thereat by the affirmative vote of holders of not less than 66 2/3% of the principal amount of the Debentures and, if the meeting is a Serial Meeting, by the affirmative vote of the holders present at such meeting of not less than 66 2/3% of the principal amount of the Debentures of each especially affected series, in each case present or represented by proxy at the meeting and voted upon on a poll shall be an Extraordinary Resolution within the meaning of this Indenture.

12.12.3 Votes on an Extraordinary Resolution shall always be given on a poll and no demand for a poll on an Extraordinary Resolution shall be necessary.

### **12.13 Powers Cumulative**

Any one or more of the powers in this Indenture stated to be exercisable by the Debentureholders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers from time to time shall not be deemed to exhaust the rights of the Debentureholders to exercise the same or any other such power or powers thereafter from time to time.

### **12.14 Minutes**

Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Debentureholders, shall be prima facie evidence of the matters therein stated and, until the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings taken thereat to have been duly passed and taken.

### **12.15 Instruments in Writing**

All actions which may be taken and all powers that may be exercised by the Debentureholders at a meeting held as hereinbefore in this Article 12 provided may also be taken and exercised by the holders of 66 2/3% of the principal amount of all the outstanding Debentures and, if the meeting at which such actions might be taken would be a Serial Meeting, by the holders of 66 2/3% of the principal amount of the Debentures then outstanding of each especially affected series, by an instrument in writing signed in one or more counterparts and the expression "Extraordinary Resolution" when used in this Indenture shall include an instrument so signed.

## **12.16 Binding Effect of Resolutions**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article at a meeting of Debentureholders shall be binding upon all the Debentureholders, whether present at or absent from such meeting, and every instrument in writing signed by Debentureholders in accordance with Section 12.15 shall be binding upon all the Debentureholders, whether signatories thereto or not, and each and every Debentureholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

## **12.17 Evidence of Rights Of Debentureholders**

12.17.1 Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Debentureholders may be in any number of concurrent instruments of similar tenor signed or executed by such Debentureholders.

12.17.2 The Trustee may, in its discretion, require proof of execution in cases where it deems proof desirable and may accept such proof as it shall consider proper.

## **12.18 Concerning Serial Meetings**

If in the opinion of Counsel any business to be transacted at any meeting, or any action to be taken or power to be exercised by instrument in writing under Section 12.15, does not adversely affect the rights of the holders of Debentures of one or more series, the provisions of this Article 12 shall apply as if the Debentures of such series were not outstanding and no notice of any such meeting need be given to the holders of Debentures of such series. Without limiting the generality of the foregoing, a proposal to modify or terminate any covenant or agreement which is effective only so long as Debentures of a particular series are outstanding shall be deemed not to adversely affect the rights of the holders of Debentures of any other series.

# **ARTICLE 13 NOTICES**

## **13.1 Notice to Corporation**

Any notice to the Corporation under the provisions of this Indenture shall be valid and effective if delivered to the Corporation at 87 Scollard Street, Suite 100, Toronto, Ontario, M5R 1G4, or if given by registered letter, postage prepaid, to such offices and so addressed and if mailed, shall be deemed to have been effectively given three days following the mailing thereof. The Corporation may from time to time notify the Trustee in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Corporation for all purposes of this Indenture.

## **13.2 Notice to Debentureholders**

13.1.1 All notices to be given hereunder with respect to the Debentures shall be deemed to be validly given to the holders thereof if sent by first class mail, postage prepaid, by letter or circular addressed to such holders at their post office addresses appearing in any of the registers hereinbefore mentioned and shall be deemed to have been effectively given three days following the day of mailing. Accidental error or omission in giving notice or accidental failure to mail notice to any Debentureholder or the inability of the Corporation

to give or mail any notice due to anything beyond the reasonable control of the Corporation shall not invalidate any action or proceeding founded thereon.

- 13.1.2 If any notice given in accordance with the foregoing paragraph would be unlikely to reach the Debentureholders to whom it is addressed in the ordinary course of post by reason of an interruption in mail service, whether at the place of dispatch or receipt or both, the Corporation shall give such notice by publication at least once in the city of Toronto (or in such of those cities as, in the opinion of the Trustee, is sufficient in the particular circumstances), each such publication to be made in a daily newspaper of general circulation in the designated city.
- 13.1.3 Any notice given to Debentureholders by publication shall be deemed to have been given on the day on which publication shall have been effected at least once in each of the newspapers in which publication was required.
- 13.1.4 All notices with respect to any Debenture may be given to whichever one of the holders thereof (if more than one) is named first in the registers hereinbefore mentioned, and any notice so given shall be sufficient notice to all holders of any Persons interested in such Debenture.

### **13.3 Notice to Trustee**

Any notice to the Trustee under the provisions of this Indenture shall be valid and effective if delivered, receipt confirmed, to the Trustee at its principal office in the City of Toronto, at 100 Adelaide St W., Suite 301, Toronto, Ontario, M5H 4H1, Attention: VP, Trust Services, Email: [tmxestaff-corporatetrust@tmx.com](mailto:tmxestaff-corporatetrust@tmx.com) and shall be deemed to have been effectively given as of the date of such receipt confirmation or if given by registered letter, postage prepaid, to such office and so addressed and, if mailed, shall be deemed to have been effectively given three days following the mailing thereof.

### **13.4 Mail Service Interruption**

If by reason of any interruption of mail service, actual or threatened, any notice to be given to the Trustee would reasonably be unlikely to reach its destination by the time notice by mail is deemed to have been given pursuant to Section 13.3, such notice shall be valid and effective only if delivered at the appropriate address in accordance with Section 13.3.

## **ARTICLE 14 CONCERNING THE TRUSTEE**

### **14.1 Replacement of Trustee**

- 14.1.1 The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation 90 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. If at any time a material conflict of interest exists in the Trustee's role as a fiduciary hereunder the Trustee shall, within 90 days after ascertaining that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in this Section 14.1. The validity and enforceability of this Indenture and of the Debentures issued hereunder shall not be affected in any manner whatsoever by reason only that such a material conflict of interest exists. In the event of the Trustee resigning or being removed or being

dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Debentureholders. Failing such appointment by the Corporation, the retiring Trustee or any Debentureholder may apply to a Justice of the Superior Court of Justice of Ontario, on such notice as such Justice may direct at the Corporation's expense, for the appointment of a new Trustee but any new Trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Debentureholders and the appointment of such new Trustee shall be effective only upon such new Trustee becoming bound by this Indenture. Any new Trustee appointed under any provision of this Section 14.1 shall be a corporation authorized to carry on the business of a trust company in one or more of the Provinces of Canada. On any new appointment the new Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee.

14.1.2 Any company into which the Trustee may be merged or, with or to which it may be consolidated, amalgamated or sold, or any company resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party, or any company which shall purchase all or substantially all of the corporate trust book of business of the Trustee, shall be the successor trustee under this Indenture without the execution of any instrument or any further act. Nevertheless, upon the written request of the successor Trustee or of the Corporation and upon the payment of any outstanding fees of the retiring Trustee, the Trustee ceasing to act shall execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Trustee so ceasing to act, and, shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation.

## **14.2 Duties of Trustee**

In the exercise of the rights, duties and obligations prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith with a view to the best interests of the Debentureholders, and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

## **14.3 Reliance Upon Declarations, Opinions, etc.**

In the exercise of its rights, duties and obligations hereunder the Trustee may, if acting in good faith, act and rely, as to the truth of the statements and accuracy of the opinions expressed therein, and shall be protected in acting and relying upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Indenture or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, if the Trustee examines such statutory declarations, opinions, reports or certificates and determines that they comply with Section 14.4, if applicable, and with any other applicable requirements of this Indenture. The Trustee may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. Without restricting the foregoing, the Trustee may rely on an opinion of Counsel satisfactory to the Trustee notwithstanding that it is delivered by a solicitor or firm which acts as solicitors for the Corporation.

#### **14.4 Evidence and Authority to Trustee, Opinions, etc.**

14.4.1 The Corporation shall furnish to the Trustee evidence of compliance with the conditions precedent provided for in this Indenture relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Indenture or as a result of any obligation imposed under this Indenture, including without limitation, the certification and delivery of Debentures hereunder, the satisfaction and discharge of this Indenture and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when (a) such evidence is required by any other Section of this Indenture to be furnished to the Trustee in accordance with the terms of this Section 13.4, or (b) the Trustee, in the exercise of its rights and duties under this Indenture, gives the Corporation written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

14.4.2 Such evidence shall consist of:

- (a) a certificate made by any two officers or directors of the Corporation, stating that any such condition precedent has been complied with in accordance with the terms of this Indenture;
- (b) in the case of a condition precedent compliance with which is, by the terms of this Indenture, made subject to review or examination by a solicitor, an opinion of Counsel that such condition precedent has been complied with in accordance with the terms of this Indenture; and
- (c) in the case of any such condition precedent compliance with which is subject to review or examination by auditors or accountants, an opinion or report of the Auditors of the Corporation whom the Trustee for such purposes hereby approves, that such condition precedent has been complied with in accordance with the terms of this Indenture.
- (d) Whenever such evidence relates to a matter other than the certificates and delivery of Debentures and the satisfaction and discharge of this Indenture, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other Person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a trustee, officer or employee of the Corporation it shall be in the form of a statutory declaration. Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this Section.

14.4.3 Each statutory declaration, certificate, opinion or report with respect to compliance with a condition precedent provided for in this Indenture shall include (a) a statement by the Person giving the evidence that he has read and is familiar with those provisions of this Indenture relating to the condition precedent in question, (b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in such evidence are based, (c) a statement that, in the belief of the Person giving such evidence, he has made such examination or investigation as is necessary to enable him to make the statements or give the opinions contained or expressed therein, and (d) a statement whether in the opinion of such Person the conditions precedent in question have been complied with or satisfied.

14.4.4 The Corporation shall furnish or cause to be furnished to the Trustee at any time if the Trustee reasonably so requires an Officer's Certificate that the Corporation has complied with all covenants, conditions or other requirements contained in this Indenture, the non-compliance with which could, with the giving of notice or the lapse of time, or both, or otherwise, constitute an Event of Default, or if such is not the case, specifying the covenant, condition or other requirement which has not been complied with and giving particulars of such non-compliance. The Corporation shall, whenever the Trustee so requires, furnish the Trustee with evidence by way of statutory declaration, opinion, report or certificate as specified by the Trustee as to any action or step required or permitted to be taken by the Corporation or as a result of any obligation imposed by this Indenture.

#### **14.5 Officer's Certificates Evidence**

Except as otherwise specifically provided or prescribed by this Indenture, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, the Trustee, if acting in good faith, may rely upon an Officer's Certificate.

#### **14.6 Experts, Advisers and Agents**

The Trustee may:

- (a) employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuer, engineer, surveyor, appraiser or other expert, whether obtained by the Trustee or by the Corporation, or otherwise, and shall not be liable for acting, or refusing to act, in good faith on any such opinion or advice and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid and shall not be responsible for the negligent actions or misconduct of such parties. The reasonable costs of such services shall be added to and become part of the Trustee's remuneration hereunder; and
- (b) employ such agents and other assistants as it may reasonably require for the proper discharge of its duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and may rely and act upon the advice of such agents and assistants and shall not be responsible for the negligent actions or misconduct of such parties and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof and any solicitors employed or consulted by the Trustee may, but need not be, solicitors for the Corporation. The Corporation shall pay or reimburse the Trustee for any reasonable fees, expenses and disbursements of such agents and assistants.

#### **14.7 Trustee May Deal in Debentures**

Subject to Section 14.2, the Trustee may, in its personal or other capacity, buy, sell, lend upon and deal in the Debentures and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

#### **14.8 Investment of Monies Held by Trustee**

Until released in accordance with this Agreement, monies held by the Trustee shall be kept segregated in the records of the Trustee and shall be deposited in one or more non-interest-bearing trust accounts to be maintained by the Trustee in the name of the Trustee at one or more banks having a Standard and Poors' Issuer Credit rating of AA- or above including Toronto Dominion Bank and Bank of Montreal (an "**Approved Bank**"). All amounts held by the Trustee pursuant to this Agreement shall be held by the Trustee pursuant to the term of this Agreement and shall not give rise to a debtor-creditor or other similar relationship. The amounts held by the Trustee pursuant to this Agreement are at the sole risk of Corporation and, without limiting the generality of the foregoing, the Trustee shall have no responsibility or liability for any diminution of the monies which may result from any deposit made with an Approved Bank pursuant to this Section 14.8 including any losses resulting from a default by the Approved Bank or other credit losses (whether or not resulting from such a default) and any credit or other losses on any deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Trustee will have acted prudently in depositing the monies at any Approved Bank,

#### **14.9 Trustee Not Ordinarily Bound**

Except as provided in Section 8.2 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 14.2, be bound to give notice to any Person of the execution hereof, nor to do, observe or perform, or see to the observance or performance by the Corporation of, any of the obligations herein imposed upon the Corporation or the covenants on the part of the Corporation herein contained, nor in any way to supervise or interfere with the conduct of the Corporation's business, unless the Trustee shall have been required to do so in writing by the holders of not less than 25% of the aggregate principal amount of the Debentures then outstanding or by any Extraordinary Resolution of the Debentureholders passed in accordance with the provisions contained in Article 12, and then only after it shall have been funded and indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

#### **14.10 Trustee Not Required to Give Security**

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Indenture or otherwise in respect of the premises.

#### **14.11 Trustee Not Bound to Act on Trust's Request**

Except as otherwise specifically provided in this Indenture, the Trustee shall not be bound to act in accordance with any direction or request of the Corporation until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

#### **14.12 Conditions Precedent to Trustee's Obligations to Act Hereunder**

14.12.1 The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee and of the Debentureholders hereunder shall be conditional upon the Debentureholders furnishing when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action

or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.

14.12.2 None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified and funded as aforesaid.

14.12.3 The Trustee may, before commencing or at any time during the continuance of any such act, action or proceeding require the Debentureholders at whose instance it is acting to deposit with the Trustee the Debentures held by them for which Debentures the Trustee shall issue receipts.

14.12.4 The Trustee shall not be required to take notice of any default hereunder, unless and until notified in writing of such default, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee and , in the absence of any such notice, the Trustee may for all purposes of this Indenture conclusively assume that no default has been made in the observance or performance of any of the representations, debentures, covenants, agreements, or conditions contained herein.

14.12.5 No duty shall rest with the Trustee to determine compliance of the transferor or transferee with applicable securities laws. The Trustee shall be entitled to assume that all transfers are legal and proper.

#### **14.13 Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces and territories of Canada but if, notwithstanding the provisions of this Section 14.13, it ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the securities issued hereunder shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in any of the provinces or territories of Canada, either become so authorized or resign in the manner and with the effect specified in Section 14.1.

#### **14.14 Compensation and Indemnity**

14.14.1 The Corporation shall pay to the Trustee, from time to time, compensation for its services hereunder as agreed separately by the Corporation and the Trustee, and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of its duties under this Indenture (including the reasonable and documented compensation and disbursements of its Counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under this Indenture shall be finally and fully performed. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust.

14.14.2 The Corporation hereby indemnifies and holds the Trustee and its Affiliates, their successors and assigns, as well as its and their respective directors, officers, employees and agents, harmless from and against any and all claims, demands, assessments,

interest, penalties, actions, suits, proceedings, liabilities, losses, damages, costs and expenses, including, without limiting the foregoing, expert, consultant and counsel fees and disbursements on a solicitor and client basis, arising from or in connection with any actions or omissions that the Trustee or they take pursuant to this Indenture, provided that the Corporation need not reimburse any cost or expense or indemnify against any loss or liability incurred by the Trustee through gross negligence or bad faith or fraud. For greater certainty, the Corporation agrees to indemnify and save harmless the Trustee against and from any present and future taxes (other than income taxes), duties, assessments or other charges imposed or levied on behalf of any governmental authority having the power to tax in connection with the Trustee's duties hereunder. In addition, the Corporation agrees to reimburse, indemnify and save harmless the Trustee for, against and from all legal fees and disbursements (on a substantial indemnity, or solicitor and client, basis) incurred by the Trustee if the Corporation commences an action, or cross claims or counterclaims, against the Trustee and the Trustee is successful in defending such claim. This indemnity shall survive the resignation or removal of the Trustee and the termination or discharge of this Indenture.

14.14.3 Notwithstanding any other provision of this Indenture, the Trustee shall not be liable for any (i) breach by any other party of the Applicable Securities Legislation, (ii) lost profits or (iii) punitive, consequential or special damages of any Person.

14.14.4 The Trustee shall notify the Corporation as soon as it is reasonably able to so, of any claim for which it may seek indemnity. The Corporation shall defend the claim and the Trustee shall co-operate in the defence. The Trustee may have separate Counsel and the Corporation shall pay the reasonable fees and expenses of such Counsel. The Corporation need not pay for any settlement made without its consent, which consent must not be unreasonably withheld.

14.14.5 The Trustee shall not be liable for or by reason of any statements of fact or recitals in this Indenture or the Debentures (except in the certification or Authentication of the Trustee on the Debentures) or be required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation.

14.14.6 Nothing herein contained shall impose any obligation on the Trustee to see to or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental hereto.

#### **14.15 Acceptance of Trust**

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for the various Persons who shall, from time to time, be Debentureholders, subject to all the terms and conditions herein set forth.

#### **14.16 Third Party Interests**

Each party to this Indenture (in this paragraph referred to as a "**representing party**") hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of such representing party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such representing party hereby agrees to complete, execute and

deliver forthwith to the Trustee a declaration, in the Trustee's prescribed form or in such other form as may be satisfactory to it, as to the particulars of such third party.

#### **14.17 Anti-Money Laundering**

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, acting reasonably, determines that such act might cause it to be in noncompliance with any applicable anti-money laundering or anti-terrorist or economic sanctions legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, acting reasonably, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist or economic sanctions legislation, regulation or guideline, then it shall have the right to resign on 10 days' prior written notice sent to the Corporation provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

#### **14.18 Privacy Laws**

The parties acknowledge that the Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Indenture and other services that may be requested from time to time;
- (b) to help the Trustee manage its servicing relationships with such individuals;
- (c) to meet the Trustee's legal and regulatory requirements; and
- (d) if Social Insurance Numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Indenture for the purposes described above and, generally, in the manner and on the terms described in its privacy code, which the Trustee shall make available on its website, <https://www.tsxtrust.com> or upon request, including revisions thereto. The Trustee may transfer personal information to other companies in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides.

Further, each party agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a party to this Indenture unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

#### **14.19 Force Majeure**

Neither party shall be liable to the other, or held in breach of this Indenture, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 14.19.

### **ARTICLE 15 SUPPLEMENTAL INDENTURES**

#### **15.1 Supplemental Indentures**

From time to time the Trustee and, when authorized by a resolution of the Board of Directors of Corporation, the Corporation, may, subject to the provisions hereof and subject to the prior approval of the CSE (or such other recognized stock exchange on which the Common Shares are then listed), as applicable, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers deeds or indentures supplemental hereto which thereafter shall form part hereof, for any one or more of the following purposes:

- (a) providing for the issuance of Additional Debentures under this Indenture;
- (b) adding to the covenants of the Corporation herein contained for the protection of the Debentureholders, or of the Debentures of any series, or providing for events of default, in addition to those herein specified;
- (c) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Debentures which do not affect the substance thereof and which in the opinion of the Trustee relying on an opinion of Counsel will not be prejudicial to the interests of the Debentureholders;
- (d) evidencing the succession, or successive successions, of others to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;
- (e) giving effect to any Extraordinary Resolution passed as provided in Section 12.11; and
- (f) for any other purpose not inconsistent with the terms of this Indenture.

Unless the supplemental indenture requires the consent or concurrence of Debentureholders or the holders of a particular series of Debentures, as the case may be, by Extraordinary Resolution, and provided no Event of Default has occurred and is continuing, the consent or concurrence of Debentureholders or the holders of a particular series of Debentures, as the case may be, shall not be required in connection with the execution, acknowledgement or delivery of a supplemental indenture. The Corporation and the Trustee, relying on the opinion of Counsel, may amend any of the provisions of this Indenture related to matters of United States law or the issuance of Debentures into the United States in order to ensure that such issuances can be made in

accordance with applicable law in the United States without the consent or approval of the Debentureholders. Further, the Corporation and the Trustee may without the consent or concurrence of the Debentureholders or the holders of a particular series of Debentures, as the case may be, and provided no Event of Default has occurred and is continuing, by supplemental indenture or otherwise, make any changes or corrections in this Indenture which it shall have been advised by Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistakes or manifest errors contained herein or in any indenture supplemental hereto or any Written Direction of the Corporation provided for the issue of Debentures, providing that in the opinion of the Trustee (relying upon an opinion of Counsel) the rights of the Debentureholders are in no way prejudiced thereby.

## **ARTICLE 16 EXECUTION AND FORMAL DATE**

### **16.1 Execution**

This Indenture may be simultaneously executed in several counterparts and may be delivered by the transmission by facsimile or email or pdf, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

### **16.2 Formal Date**

For the purpose of convenience this Indenture may be referred to as bearing the formal date of December 23, 2021 irrespective of the actual date of execution hereof.

**[Balance of Page Left Blank]**

The parties have executed this Agreement.

**PROPHECY DEFI INC.**

Per: “John McMahon” (signed)  
Name: John McMahon  
Title: Chief Executive Officer

**TSX TRUST COMPANY**

Per: “Donald Crawford” (signed)  
Name: Donald Crawford  
Title: Senior Trust Officer

Per: “Sumit Khanna” (signed)  
Name: Sumit Khanna  
Title: Corporate Trust Officer

*[Signature Page to Convertible Debenture Indenture]*

**SCHEDULE A  
FORM OF DEBENTURE**

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE APRIL 24, 2022.

**(INSERT IF BEING ISSUED TO CDS)** UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. (“**CDS**”) TO PROPHECY DEFI INC. (THE “**ISSUER**”) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS CERTIFICATE.

Certificate No. [●]

C\$[●]

CUSIP No. 74349RAA3

ISIN No. CA74349RAA38

**PROPHECY DEFI INC.**

(A corporation existing under the laws of the Province of Ontario)

**10.0% UNSECURED CONVERTIBLE DEBENTURE**

**DUE DECEMBER 23, 2024**

Prophecy DeFi Inc. (the “**Corporation**”) for value received hereby acknowledges itself indebted and, subject to the provisions of the convertible debenture indenture (the “**Indenture**”) dated as of December 23, 2021 between the Corporation and TSX Trust Company (the “**Debenture Trustee**”), promises to pay to the registered holder hereof on December 23, 2024 (the “**Maturity Date**”) or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Indenture the principal amount hereof in lawful money of Canada on presentation and surrender of this Debenture at the offices of the Debenture Trustee in Toronto, Ontario in accordance with the terms of the Indenture and, subject as hereinafter provided, to pay interest on the principal amount hereof from the date hereof, or from the last Interest Payment Date (as defined below) to which interest shall have been paid or made available for payment hereon, whichever is later, at the rate of 10.0% per annum, in like money, in arrears payable on the last day of each of December, March, June and September in each year commencing on December 31, 2021 (each, an “**Interest Payment Date**”) and including the last payment (representing interest payable from the last Interest Payment Date to, but excluding, the Maturity Date or the earlier date of redemption) to fall due on the Maturity Date and, should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate, in like money and on the same dates.

Reference is hereby expressly made to the Indenture for a description of the terms and conditions upon which the Debentures are or are to be issued and held and the rights and remedies of the holders of the Debentures and of the Corporation and of the Debenture Trustee, all to the same

effect as if the provisions of the Indenture were herein set forth, and to all of which provisions the holder of this Debenture by acceptance hereof assents. To the extent that the terms and conditions stated in this Debenture conflict with the terms and conditions of the Indenture, the latter shall prevail. All capitalized terms used herein have the meaning ascribed thereto in the Indenture unless otherwise indicated. Interest hereon shall be payable by cheque or electronic transfer of funds to the registered holder hereof or such other means provided in the Indenture and, subject to the provisions of the Indenture, the sending of such cheque or electronic transfer of funds shall, to the extent of the sum represented thereby, satisfy and discharge all liability for interest on this Debenture.

This Debenture is one of the Debentures of the Corporation issued under the provisions of the Indenture. Upon compliance with the provisions of the Indenture, Debentures of any denomination may be exchanged for an equal aggregate principal amount of Debentures in any other authorized denomination or denominations.

Any part, being \$1,000 or an integral multiple thereof, of the principal of this Debenture, provided that the principal amount of this Debenture is in a denomination in excess of \$1,000, is convertible, at the option of the holder hereof, upon surrender of this Debenture at the principal offices of the Debenture Trustee in the City of Toronto, Ontario, at any time prior to 5:00 pm. (Eastern Time) on the Business Day immediately preceding the Maturity Date or, if this Debenture is called for redemption pursuant to the Indenture or repurchase pursuant to a Change of Control on or prior to such date, then up to but not after the close of business on the last Business Day immediately preceding the Redemption Date or the Change of Control Purchase Date, as applicable, into Common Shares (without adjustment for interest accrued hereon at a conversion price of \$0.60 per Common Share (the "**Conversion Price**")), being a conversion ratio of 1,667 Common Shares for each \$1,000 principal amount of Debentures so converted, all subject to the terms and conditions and in the manner set forth in the Indenture. The Indenture makes provision for the adjustment of the Conversion Price in the events therein specified. No fractional Common Shares will be issued, and the number of Common Shares so issuable will be rounded down to the nearest whole number.

Subject to the provisions in the Indenture and without further action on the part of the registered holder, if at any time following April 24, 2022 and prior to the Maturity Date, the volume weighted average price of the Common Shares on the Canadian Securities Exchange (the "**CSE**") (or such other recognized stock exchange on which the Common Shares are listed for trading) for 10 consecutive trading days exceeds \$1.20, as adjusted in accordance with the Indenture, the Corporation may, on not less than 30 but no more than 60 days prior notice (the "**Forced Conversion Notice**") delivered in accordance with Section 13.2 of the Indenture, convert all but not less than all of the principal amount of the Debentures at the Conversion Price. Holders whose Debentures are so converted will receive accrued and unpaid interest thereon for the period from and including the last Interest Payment Date to, but excluding, the Forced Conversion Date. No later than the Business Day immediately preceding the Forced Conversion Date, the Corporation shall pay to the Trustee in lawful money of Canada an amount equal to all accrued and unpaid interest on the Debentures, less any tax required to be deducted, for payment onto the Debentureholders.

The effective date for the forced conversion (the "**Forced Conversion Date**") shall be: (a) the date stipulated in the Forced Conversion Notice, which shall not be less than 30 days from the date of the Forced Conversion Notice; or (b) if no date is so stipulated in the Forced Conversion Notice, the date that is 30 days following the date of such Forced Conversion Notice, and upon such Forced Conversion Date: (i) all of the principal amount of the Debentures shall be deemed

to be converted into Common Shares at the then applicable Conversion Price; (ii) all accrued and unpaid interest (less any tax required by law to be deducted or withheld) shall become payable to the registered holder; and (iii) the registered holder shall be entered in the books of the Corporation as at the Forced Conversion Date as the holder of the number of Common Shares, as applicable, into which the Debentures are convertible. In the event that the Corporation delivers a Forced Conversion Notice, upon surrender of this Debenture to the Trustee, the Corporation shall deliver certificates for the Common Shares into which the Debentures have been converted. For greater certainty, notwithstanding the delivery by the Corporation of a Forced Conversion Notice, a holder of Debentures may convert such Debentures in whole or in part at any time until 5:00 p.m. (Eastern Time) on the Business Day prior to the Forced Conversion Date.

This Debenture may be redeemed at the option of the Corporation on the terms and conditions set out in the Indenture, provided that the Debentures will not be redeemable before December 23, 2022, except in the event of the satisfaction of certain conditions after a Change of Control has occurred as provided in the Indenture. On and after December 23, 2022 and prior to the Maturity Date, the Debentures may be redeemed in whole or in part at the option of the Corporation at a price of \$1,000 per Debenture plus accrued and unpaid interest and otherwise on the terms and conditions described in the Indenture.

Upon the occurrence of a Change of Control of the Corporation, the Corporation is required to make an offer to purchase all of the Debentures at a price equal to 105% of the principal amount of such Debentures plus accrued and unpaid interest up to, but excluding, the date the Debentures are so repurchased (the “**Change of Control Purchase Offer**”). If 90% or more in aggregate principal amount of Debentures outstanding on the date the Change of Control Notice and the Change of Control Purchase Offer are delivered or mailed to holders of the Debentures have been tendered for purchase and not withdrawn pursuant to the Change of Control Purchase Offer, then the Corporation has the right upon written notice provided to the Debenture Trustee within ten (10) calendar days following the expiration of the Change of Control Purchase Option to redeem all the remaining outstanding Debentures on the same date and at the same price, subject to the terms and conditions described in the Indenture.

If an Offer for outstanding Debentures (other than Debentures held by or on behalf of the Offeror, Associates or Affiliates of the Offeror or anyone acting jointly or in concert with the Offeror) is made and 90% or more of the outstanding principal amount of the Debentures is taken up and paid for by the Offeror, the Offeror will be entitled to acquire the Debentures of those holders who did not accept the offer on the same terms as the Offeror acquired the first 90% of the principal amount of the Debentures.

The indebtedness, liabilities and obligations of the Corporation under this Debenture are direct unsecured obligations of the Corporation, and will rank equally with one another and with all other unsecured and subordinated indebtedness of the Corporation except as prescribed by law.

The principal hereof may become or be declared due and payable before the stated maturity in the events, in the manner, with the effect and at the times provided in the Indenture.

The Indenture contains provisions making binding upon all holders of Debentures outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments signed by the holders of a specified majority of Debentures outstanding, which resolutions or instruments may have the effect of amending the terms of this Debenture or the Indenture.

This Debenture may only be transferred, upon compliance with the conditions prescribed in the Indenture, in one of the registers to be kept at the principal offices of the Debenture Trustee in Toronto, Ontario and in such other place or places and/or by such other registrars (if any) as the Corporation with the approval of the Debenture Trustee may designate. No transfer of this Debenture shall be valid unless made on the register by the registered holder hereof and upon compliance with such reasonable requirements as the Debenture Trustee and/or other registrar may prescribe and upon surrender of this Debenture for cancellation. Thereupon a new Debenture or Debentures in the same aggregate principal amount shall be issued to the transferee in exchange hereof.

This Debenture shall not become obligatory for any purpose until it shall have been certified by the Debenture Trustee under the Indenture.

The Indenture and this Debenture shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Capitalized words or expressions used in this Debenture shall, unless otherwise defined herein, have the meaning ascribed thereto in the Indenture.

**In the event that the terms and conditions stated in this Debenture conflict, or are inconsistent, with the terms and conditions of the Indenture, the Indenture shall prevail and take priority.**

***[Remainder of page intentionally left blank. Signature page follows.]***

**IN WITNESS WHEREOF** Prophecy DeFi Inc. has caused this Debenture to be signed by its authorized signatories as of the 23<sup>rd</sup> day of December, 2021.

**PROPHECY DEFI INC.**

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

Name:

Title:

**TRUSTEE'S CERTIFICATE**

This Debenture is one of the 10.0% Unsecured Convertible Debentures due December 23, 2024 referred to in the Indenture within mentioned.

Dated: \_\_\_\_\_, 2021.

**TSX TRUST COMPANY**

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

Name:

Title:

**SCHEDULE A**

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto, whose address, if applicable, is set forth below, these Debentures (or C\$[●] principal amount hereof) of Prophecy DeFi Inc. standing in the name(s) of the undersigned in the register maintained by TSX Trust Company with respect to such Debentures and does hereby irrevocably authorize and direct the Debenture Trustee to transfer such Debentures in such register, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Address of Transferee: \_\_\_\_\_

\_\_\_\_\_  
(Street Address, City, Province and Postal Code)

(\* If less than the full principal amount of the within Debenture is to be transferred, indicate in the space provided the principal amount (which must be C\$1,000 or an integral multiple thereof, unless you hold an Debenture in a non-integral multiple of C\$1,000, in which case such Debenture is transferable only in its entirety) to be transferred.

Dated: \_\_\_\_\_ Signature(s): \_\_\_\_\_

\_\_\_\_\_  
Signature of transferring registered holder

Signature of Guarantor:

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Signature of transferring registered holder

\_\_\_\_\_  
Name of Institution

**REASON FOR TRANSFER – For US Residents only (where the individual(s) or corporation receiving the securities is a US resident). Please select only one (see instructions below).**

Gift     Estate     Private Sale     Other (or no change in ownership)

**Date of Event** (Date of gift, death or sale):

\_\_\_\_\_

**Value per Debenture** on the date of event:

\$ \_\_\_\_\_ CAD OR \_\_\_\_\_ USD

1. The signature(s) of the transferor(s) must correspond with the name(s) as written upon the face of this certificate(s), in every particular, without alteration or enlargement, or any change whatsoever. The signature(s) on this form must be guaranteed by an authorized officer of Royal Bank of Canada, Scotia Bank or TD Canada Trust whose sample signature(s) are on file with the transfer agent, or by a member of an acceptable Medallion Signature Guarantee Program (STAMP, SEMP, NYSE, MSP). Notarized or witnessed signatures are not acceptable as guaranteed signatures. The Guarantor must affix a stamp bearing the actual words: "SIGNATURE GUARANTEED", "MEDALLION GUARANTEED" OR "SIGNATURE & AUTHORITY TO SIGN GUARANTEE", all in accordance with the transfer agent's then current guidelines and requirements at the time of transfer. For corporate holders, corporate signing resolutions, including certificate of incumbency, will also be required to accompany the transfer unless there is a "SIGNATURE & AUTHORITY TO SIGN GUARANTEE" Stamp affixed to the Form of Transfer obtained from an authorized officer of the Royal Bank of Canada, Scotia Bank or TD Canada Trust or a "MEDALLION GUARANTEED" Stamp affixed to the Form of Transfer, with the correct prefix covering the face value of the certificate.
  
2. The registered holder of this Initial Debenture is responsible for the payment of any documentary, stamp or other transfer taxes that may be payable in respect of the transfer of this Debenture.

**SCHEDULE B  
FORM OF NOTICE OF CONVERSION**

**TO: PROPHECY DEFI INC.**

**AND TO: TSX TRUST COMPANY**

**NOTE:** All capitalized terms used herein have the meaning ascribed thereto in the Indenture (as defined herein), unless otherwise indicated.

The undersigned registered holder of 10.0% Unsecured Convertible Debentures in the principal amount of C\$[●] irrevocably elects to convert such Debentures (or C\$[●] principal amount thereof) in accordance with the terms of the Indenture referred to in such Debentures and tenders herewith the Debentures, and, if applicable, directs that the Common Shares of Prophecy DeFi Inc. issuable upon a conversion be issued and delivered to the Person indicated below. (If Common Shares are to be issued in the name of a Person other than the holder, all requisite transfer taxes must be tendered by the undersigned and the Form of Assignment must be completed.)

\_\_\_\_\_  
Dated:

\_\_\_\_\_  
Signature of Registered Holder

(\*) If less than the full principal amount of the Debentures, indicate in the space provided the principal amount (which must be C\$1,000 or integral multiples thereof).

**NOTE:** If Common Shares are to be issued in the name of a Person other than the holder, the signature must be guaranteed as follows:

The signature(s) of the transferor(s) must correspond with the name(s) as written upon the face of this certificate(s), in every particular, without alteration or enlargement, or any change whatsoever. The signature(s) on this form must be guaranteed by an authorized officer of Royal Bank of Canada, Scotia Bank or TD Canada Trust whose sample signature(s) are on file with the transfer agent, or by a member of an acceptable Medallion Signature Guarantee Program (STAMP, SEMP, NYSE, MSP). Notarized or witnessed signatures are not acceptable as guaranteed signatures. The Guarantor must affix a stamp bearing the actual words: "SIGNATURE GUARANTEED", "MEDALLION GUARANTEED" OR "SIGNATURE & AUTHORITY TO SIGN GUARANTEE", all in accordance with the transfer agent's then current guidelines and requirements at the time of transfer. For corporate holders, corporate signing resolutions, including certificate of incumbency, will also be required to accompany the transfer unless there is a "SIGNATURE & AUTHORITY TO SIGN GUARANTEE" Stamp affixed to the Form of Transfer obtained from an authorized officer of the Royal Bank of Canada, Scotia Bank or TD Canada Trust or a "MEDALLION GUARANTEED" Stamp affixed to the Form of Transfer, with the correct prefix covering the face value of the certificate.

(Print name in which Common Shares are to be issued, delivered and registered)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
(Street Address, City, Province and Postal Code)

\_\_\_\_\_  
Name of guarantor

\_\_\_\_\_  
Authorized Signature