

**XS FINANCIAL INC.**

and

**ODYSSEY TRUST COMPANY**

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**WARRANT INDENTURE**

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Providing for the Issue of up to 43,850,509 Warrants

Dated as of March 3, 2021

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## WARRANT INDENTURE

**THIS INDENTURE** made as of March 3, 2021,

**B E T W E E N :**

**XS FINANCIAL INC.**, a company incorporated under the laws of British Columbia

(the "**Corporation**")

- and -

**ODYSSEY TRUST COMPANY**, a trust company existing under the laws of the Province of Alberta

(the "**Warrant Agent**")

**W H E R E A S :**

- A. All capitalized terms used in these recitals have the meanings ascribed to them in section 1.1 below;
- B. The Corporation proposes to complete a private placement (the "**Offering**") pursuant to which it will issue up to (i) 26,666,700 Units pursuant to the brokered portion of the Offering, with each Unit consisting of one Subordinate Voting Share and one Warrant, all as further set forth in the Agency Agreement; and (ii) 12,593,031 Units pursuant to the non-brokered portion of the Offering;
- C. In connection with the Offering, the Corporation will issue (i) up to 3,140,778 broker warrants to the Agents and certain other finders, each entitling the holder to acquire one Unit at an exercise price of \$0.30 for a period of two years; and (ii) 1,450,000 Units to the Agents in satisfaction of certain corporate finance fees and fiscal advisory fees payable to the Agents in connection with the brokered and non-brokered portions of the Offering, respectively;
- D. In furtherance of the foregoing, the Corporation will issue up to a maximum of 43,850,509 Warrants pursuant to this Indenture;
- E. Pursuant to this Indenture, each Warrant shall, entitle the Holder thereof to receive, upon payment of the Exercise Price, and subject to adjustment and penalties in certain circumstances, one Subordinate Voting Share at any time prior to the Expiry Time upon the terms and conditions herein set forth;
- F. The Corporation is duly authorized to create and issue the Warrants to be issued as herein provided;
- G. All things necessary have been done and performed to make the Warrants, when issued as provided in this Indenture, legal, valid and binding upon the Corporation with the benefits of and subject to the terms of this Indenture;
- H. The foregoing recitals are made as representations and statements of fact by the Corporation and not by the Warrant Agent; and
- I. the Warrant Agent has agreed to act as the Warrant Agent in respect of the Warrants on behalf of the Holders on the terms and conditions herein set forth;

**NOW THEREFORE THIS INDENTURE WITNESSES** that for good and valuable consideration mutually given and received, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed and declared as follows:

## **ARTICLE 1** **INTERPRETATION**

### **1.1 DEFINITIONS**

In this Indenture, including the recitals and schedules hereto, the following words and phrases shall have the following meanings:

- (a) "**Agents**" means Gravitax Securities Inc., Canaccord Genuity Corp. and such other syndicate members as may be agreed upon;
- (b) "**Agency Agreement**" means the agreement dated March 3, 2021 between the Corporation and the Agents with respect to the sale of Units.
- (c) "**Authenticated**" means (a) with respect to the issuance of a Warrant Certificate, one which has been duly signed by the Corporation and authenticated by manual signature of an authorized officer of the Warrant Agent, and (b) with respect to the issuance of an Uncertificated Warrant, one in respect of which the Warrant Agent has completed all Internal Procedures such that the particulars of such Uncertificated Warrant as required by Section **Error! Reference source not found.** are entered in the register of holders of Warrants, "**Authenticate**", "**Authenticating**" and "**Authentication**" have the appropriate correlative meanings;
- (d) "**Book Entry Only Participants**" or "**Participants**" means institutions that participate directly or indirectly in the Depository's book entry registration system for the Warrants;
- (e) "**Book Entry Only Warrants**" means Warrants that are to be held only by or on behalf of the Depository;
- (f) "**Business Day**" means any day (other than a Saturday, Sunday or statutory holiday) on which the principal transfer office of the Warrant Agent in Calgary, Alberta is open for business;
- (g) "**CDS Global Warrants**" means Warrants representing all or a portion of the aggregate number of Warrants issued in the name of the Depository represented by an Uncertificated Warrant, or if requested by the Depository or the Corporation, by a Certificated Warrant;
- (h) "**Certificated Warrant**" means a Warrant evidenced by a writing or writings substantially in the form of Schedule "A", attached hereto;
- (i) "**Corporation**" means XS Financial Inc. and includes any Successor Corporation to or of XS Financial Inc. which has complied with the provisions of Article 8;
- (j) "**Corporation's Auditors**" means an independent firm of chartered accountants duly appointed as auditors of the Corporation;

- (k) "**CSE**" means the Canadian Securities Exchange;
- (l) "**Current Market Price**" at any date, means the volume weighted average price per Subordinate Voting Share at which the Subordinate Voting Shares have traded:
  - (i) on the CSE;
  - (ii) if the Subordinate Voting Shares are not listed on the CSE, on any stock exchange upon which the Subordinate Voting Shares are listed as may be selected for this purpose by the Directors and approved by the Warrant Agent; or
  - (iii) if the Subordinate Voting Shares are not listed on any stock exchange, on any over-the-counter market as may be selected for this purpose by the Directors and approved by the Warrant Agent;

during the last twenty (20) trading days (on which at least 500 Subordinate Voting Shares are traded in board lots) ending the fifth trading day before such date, and the volume weighted average price shall be determined by dividing the aggregate sale price of all Subordinate Voting Shares traded on the exchange or market, as the case may be, during such twenty (20) consecutive trading days by the aggregate number of Subordinate Voting Shares sold;

- (m) "**Default Notice**" shall have the meaning ascribed thereto in Section 6.6 hereof;
- (n) "**Depository**" means CDS Clearing and Depository Services Inc. or such other person as is designated in writing by the Corporation to act as depository in respect of the Warrants;
- (o) "**Designated Provinces**" means the provinces as agreed to between the Corporation and the Agents in which the Units are to be sold;
- (p) "**Director**" means a director of the Corporation and "**Directors**" or "**Board of Directors**" means the board of directors of the Corporation or, whenever duly empowered, a committee of the board of directors of the Corporation, and reference to "**action by the directors**" means action by the directors of the Corporation as a board or action by a committee as a committee;
- (q) "**dividends**" means dividends or distributions (payable in cash or in securities, property or assets of equivalent value) declared payable on the Subordinate Voting Shares;
- (r) "**Exercise Date**" means, with respect to any Warrant, the date on which such Warrant is surrendered by a Holder for exercise in accordance with the provisions of Article 3 hereof;
- (s) "**Exercise Form**" has the meaning ascribed thereto in subsection 3.2(a);
- (t) "**Exercise Price**" shall have the meaning ascribed thereto in subsection 3.2(a);
- (u) "**Expiry Date**" means, with respect to any Warrant, March 3, 2023;
- (v) "**Expiry Time**" means 5:00 p.m. (Toronto time) on the Expiry Date;



- (w) "**Extraordinary Resolution**" has the meaning ascribed thereto in sections 9.12 and 9.15;
- (x) "**Holder**" means a person for the time being who is the registered holder of a Warrant;
- (y) "**Holders' Request**" means an instrument signed in one or more counterparts by Holders entitled to acquire in the aggregate not less than 40% of the aggregate number of Subordinate Voting Shares which could be acquired pursuant to the exercise of all Warrants then unexercised and outstanding, requesting the Warrant Agent to take some action or proceeding specified therein;
- (z) "**Indenture**" or "**this Indenture**" and "**hereto**", "**herein**", "**hereby**", "**hereunder**", "**hereof**" and similar expressions refer to this instrument and not to any particular Article, section, clause, subdivision or other portion hereof, and include each instrument supplemental or ancillary hereto or required to implement this instrument;
- (aa) "**Indenture Legislation**" has the meaning ascribed thereto in subsection 11.1(a);
- (bb) "**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 at any time (including without limitation, original issuance or registration of transfer of ownership), the minimum number of the Warrant Agent'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 Warrant Agent, it being understood that neither preparation nor issuance shall constitute part of such procedures for any purpose of this definition;
- (cc) "**Officers' Certificate**" means a certificate signed by any one or more of the officers or Directors of the Corporation;
- (dd) "**Person**" includes any individual, corporation, company, partnership, association, joint venture, trust, unincorporated association, government or governmental authority;
- (ee) "**Privacy Laws**" has the meaning ascribed thereto in Section 11.16;
- (ff) "**Regulation S**" means Regulation S promulgated under the U.S. Securities Act;
- (gg) "**Securities Commissions**" means the securities regulatory authorities in the Designated Provinces;
- (hh) "**Securities Laws**" means, as applicable, the securities laws, regulations, rules, rulings and orders in each of the Provinces of Canada in which Subscribers reside, the applicable policy statements issued by the securities regulators in each of the Provinces of Canada in which Subscribers reside, and the rules of the CSE;
- (ii) "**Subordinate Voting Shares**" means subordinate voting shares in the capital of the Corporation;
- (jj) "**Subscribers**" means, collectively, all of the Persons who have subscribed for Warrants and "**Subscriber**" means any one of them;

- (kk) "**Subsidiary**" means any corporation of which more than 50% of the votes attached to the outstanding voting shares are owned by or for the Corporation or by or for any corporation in like relation to the Corporation and includes any corporation in like relation to a Subsidiary;
- (ll) "**Successor Corporation**" has the meaning ascribed thereto in section 8.2;
- (mm) "**Uncertificated Warrant**" means any Warrant that is not a Certificated Warrant;
- (nn) "**Underlying Securities**" means the Subordinate Voting Shares underlying the Warrants;
- (oo) "**Unit**" means a unit of the Corporation issued in accordance with the terms of the Agency Agreement, each such Unit consisting of one Subordinate Voting Share and one Warrant;
- (pp) "**U.S. Person**" shall have the meaning ascribed thereto in Rule 902(k) of Regulation S;
- (qq) "**U.S. Purchaser**" means an original purchaser of the Units of which the Warrants comprise a part who was, at the time of purchase, (a) a U.S. Person or a person in the United States, (b) any person that purchased such Units on behalf of, or for the account or benefit of, any U.S. Person or any person in the United States, (c) any person who received an offer to acquire such Units while in the United States, and (d) any person who was in the United States at the time such person's buy order was made or the subscription agreement pursuant to which such Units were acquired was executed or delivered, and that is designated by the Corporation to receive a Warrant Certificate bearing the legend set forth in Section 2.10(b) of this Indenture;
- (rr) "**U.S. Securities Act**" means the United States Securities Act of 1933, as amended;
- (ss) "**U.S. Warrantholder**" means (i) any U.S. Purchaser and (ii) any Holder that is, or is acting for the account or benefit of, any U.S. Person or person in the United States that did not acquire the Warrants directly from the Corporation in the Offering;
- (tt) "**Warrant Agency**" means the principal transfer office of the Warrant Agent in the City of Calgary, Alberta and such other locations as the Corporation may designate with the approval of the Warrant Agent;
- (uu) "**Warrant Agent**" means Odyssey Trust Company or its successor or successors for the time being as Warrant Agent hereunder, at its principal office in the City of Calgary, Alberta;
- (vv) "**Warrant Certificate**" means a certificate in substantially the form set out in Schedule "A" hereto, issued hereunder to evidence one or more Certificated Warrants;
- (ww) "**Warrants**" means the fully-paid warrants of the Corporation issued hereunder to be issued and countersigned hereunder as a Certificated Warrant and/or Uncertificated Warrant held through the book entry registration system on a no certificate issued basis, and for the time being outstanding entitling registered holders thereof to acquire, upon the valid exercise thereof and subject to adjustment in certain circumstances, one Subordinate Voting Share in accordance with the terms hereof, and "**Warrant**" means any one of them; and

- (xx) "**written order of the Corporation**", "**written request of the Corporation**", "**written consent of the Corporation**" and "**certificate of the Corporation**" mean respectively a written order, request, consent and certificate signed in the name of the Corporation by any one or more of the officers or Directors of the Corporation and may consist of one or more instruments so executed and any other documents referred to herein which is required or contemplated to be provided or given by the Corporation; and a derivative of any defined word or phrase has the meaning appropriate to the derivation of the word or phrase.

## 1.2 MEANING OF "OUTSTANDING" FOR CERTAIN PURPOSES

Except as provided in section 3.7, every Warrant Certificate countersigned and delivered by the Warrant Agent under this Indenture shall be deemed to be outstanding until it has been surrendered to the Warrant Agent pursuant to this Indenture, provided however that:

- (a) a Warrant Certificate that has been partially exercised or exchanged shall be deemed to be outstanding only to the extent of the unexercised or unexchanged, as the case may be, part of the Warrants evidenced thereby;
- (b) where a Warrant Certificate has been issued in substitution for a Warrant Certificate that has been lost, stolen or destroyed, only one of them shall be counted for the purpose of determining the Warrants outstanding; and
- (c) for the purpose of any provision of this Indenture entitling holders of outstanding Warrants to vote, sign consents, requests or other instruments or take any other action under this Indenture, Warrants owned legally or beneficially by the Corporation or any Subsidiary shall be disregarded, except that:
  - (i) for the purpose of determining whether the Warrant Agent will be protected in relying on any vote, consent, request or other instrument or other action, only the Warrants of which the Warrant Agent has notice that they are so owned shall be so disregarded; and
  - (ii) Warrants so owned that have been pledged in good faith other than to the Corporation or any Subsidiary shall not be so disregarded if the pledgee establishes to the satisfaction of the Warrant Agent the pledgee's right to vote the Warrants in the pledgee's discretion free from the control of the Corporation or any Subsidiary pursuant to the terms of the pledge.

## 1.3 CERTAIN RULES OF INTERPRETATION

Unless otherwise specified in this Indenture:

- (a) words importing the singular number include the plural and vice versa;
- (b) words importing gender include both genders and vice versa and words importing individuals include firms and corporations and vice versa;
- (c) "**in writing**" or "**written**" includes printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception, including telecopy;

- (d) **"including"** is used for illustration only and not to limit the generality of any preceding words, whether or not non-limiting language (such as, **"without limitation"**, **"but not limited to"** and similar expressions) is used with reference thereto; and
- (e) reference to any statute, regulation or by-law includes amendments, consolidations, re-enactments and replacements thereof and instruments and legislation thereunder.

#### **1.4 INTERPRETATION NOT AFFECTED BY HEADINGS, ETC.**

The division of this Indenture into Articles, sections and other subdivisions, the inclusion of a table of contents and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Indenture.

#### **1.5 APPLICABLE LAW**

This Indenture, the Warrants and the Warrant Certificates shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any and all disputes arising under this Indenture, the Warrants and the Warrant Certificates, whether as to interpretation, performance or otherwise, shall be subject to the non-exclusive jurisdiction of the courts of the Province of Ontario and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of such Province.

#### **1.6 LANGUAGE CLAUSE**

The parties hereto have required that this Indenture and all documents and notices related thereto or resulting therefrom be drawn up in English.

#### **1.7 DAY NOT A BUSINESS DAY**

Whenever any payment is due or required to be made or any other action is required to be taken under this Indenture or the Warrant Certificates on or as of a day that is not a Business Day, that payment must be made and the other action must be taken on or as of the next day that is a Business Day. However notwithstanding the foregoing, this provision shall not under any circumstances be construed so as to extend the Expiry Date.

#### **1.8 CONFLICT**

In the event of a conflict or inconsistency between a provision of this Indenture and in the Warrant Certificates issued hereunder, the relevant provision in this Indenture shall prevail to the extent of the inconsistency.

#### **1.9 TIME OF THE ESSENCE**

Time shall be of the essence of this Indenture, the Warrants and the Warrant Certificates.

#### **1.10 CURRENCY**

Except as otherwise stated, all dollar amounts herein are expressed in Canadian dollars.

## 1.11 SCHEDULES

Schedule "A" to this Indenture is incorporated into this Indenture by reference.

## **ARTICLE 2** **ISSUE OF WARRANTS**

### 2.1 CREATION AND ISSUE OF WARRANTS

- (a) The Corporation hereby creates and authorizes the reservation for issue and, as applicable, the issuance of the Warrants as of the date hereof and at any additional closings, with the aggregate number of Warrants to be issued not to exceed 43,850,509 Warrants, subject to adjustment as provided for herein.
- (b) The Warrant Agent is hereby appointed Warrant Agent in respect of the Warrants.

### 2.2 TERMS OF WARRANTS

- (a) The Warrants shall be issued hereunder in accordance with the direction provided to the Warrant Agent pursuant to Subsections 2.2, 2.4, 2.5, 2.7 and 2.8 hereof.
- (b) Upon the valid exercise of the Warrants prior to the Expiry Time in accordance with Section 3.2 hereof, including payment of the Exercise Price in connection therewith, each Warrant shall entitle the Holder to acquire, subject to adjustment in accordance with Article 4 hereof, one Subordinate Voting Share.
- (c) No Certificated Warrant or Uncertificated Warrant evidencing fractional Warrants shall be issued or otherwise provided for and a Subscriber or a Holder shall not be entitled to any cash or other consideration in lieu of any fractional interest in a Warrant or claim thereto.
- (d) The number of Subordinate Voting Shares which may be acquired pursuant to the exercise of the Warrants shall be adjusted in the events and in the manner specified in Article 4.
- (e) All Warrants shall rank *pari passu*, whatever may be the actual date of issue thereof.
- (f) The Warrants and any rights thereunder shall expire in accordance with the provisions of section 3.7.

### 2.3 WARRANT CERTIFICATES

The Warrant Certificates to be issued to evidence the Certificated Warrants authorized for issuance pursuant to section 2.1 shall be issuable in registered form only, shall be in the English language and shall be substantially in the form set out in Schedule "A". All Warrant Certificates shall be dated as of the date of their issuance, and shall bear such distinguishing letters and numbers as the Corporation may, with the approval of the Warrant Agent, prescribe, and shall be issuable in any denomination excluding fractions. Irrespective of any adjustments pursuant to Article 4, Warrant Certificates shall continue to be in the form set out in Schedule "A" and shall continue to express the number of Subordinate Voting Shares that may be acquired upon the exercise of the Warrants evidenced thereby prior to any such adjustment.

## **2.4 SIGNING OF WARRANT CERTIFICATES**

The Warrant Certificates shall be signed by any director or officer of the Corporation. The signature of such signing officer may be mechanically reproduced in facsimile and Warrant Certificates bearing such facsimile signature shall be binding upon the Corporation as if they had been manually signed by such signing officer. Notwithstanding that any individual whose manual or facsimile signature appears on any Warrant Certificate as a signing officer may no longer hold office or a directorship, as applicable, at the date of issue of such Warrant Certificate or at the date of certification or delivery thereof, any Warrant Certificate signed as aforesaid shall, subject to section 2.5, be valid and binding upon the Corporation and the Holder thereof shall be entitled to the benefits of this Indenture.

## **2.5 COUNTERSIGNATURE BY THE WARRANT AGENT**

- (a) Warrant Certificates evidencing the Certificated Warrants shall be countersigned by or on behalf of the Warrant Agent on written direction of the Corporation.
- (b) No Warrant Certificate shall be issued or, if issued, shall be valid for any purpose or entitle the Holder to the benefit hereof until it has been countersigned by manual signature by or on behalf of the Warrant Agent, and such countersignature by the Warrant Agent upon any Warrant Certificate shall be conclusive evidence as against the Corporation that the Warrant Certificate so countersigned has been duly issued hereunder and that the Holder is entitled to the benefits hereof.
- (c) The countersignature of the Warrant Agent on Warrant Certificates issued hereunder shall not be construed as a representation or warranty by the Warrant Agent as to the validity of this Indenture or the Warrant Certificates (except the due countersignature thereof) and the Warrant Agent shall in no respect be liable or answerable for the use made of the Warrant Certificates or any of them or of the consideration therefor.

## **2.6 HOLDER NOT A SHAREHOLDER**

Nothing in this Indenture or in the holding of a Certificated Warrant or Uncertificated Warrant itself, shall be construed as conferring upon a Holder any right or interest whatsoever as a shareholder of the Corporation, including, but not limited to, the right to vote at, to receive notice of, or to attend, meetings of shareholders or any other proceedings of the Corporation, or the right to receive dividends and other distributions, except as may be provided herein or in the Warrant Certificates.

## **2.7 FORM OF WARRANTS**

The Warrants may be issued in both certificated and uncertificated form. All Warrants issued in certificated form shall be evidenced by a Warrant Certificate (including all replacements issued in accordance with this Indenture), substantially in the form set out in Schedule "A" hereto, which shall bear such distinguishing letters and numbers as the Corporation may, with the approval of the Warrant Agent, prescribe, and shall be issuable in any denomination excluding fractions. All Warrants issued to the Depository may be in either a certificated or uncertificated form, such uncertificated form being evidenced by a book position on the register of Holders to be maintained by the Warrant Agent in accordance with Section **Error! Reference source not found.**

## 2.8 BOOK ENTRY ONLY WARRANTS

- (a) Registration of beneficial interests in and transfers of Warrants held by the Depository shall be made only through the book entry registration system and no Warrant Certificates shall be issued in respect of such Warrants except where physical certificates evidencing ownership in such securities are required or as set out herein or as may be requested by the Depository, as determined by the Corporation, from time to time. Except as provided in this Section 2.8, owners of beneficial interests in any CDS Global Warrants shall not be entitled to have Warrants registered in their names and shall not receive or be entitled to receive Warrants in definitive form or to have their names appear in the register referred to in Section **Error! Reference source not found.** herein. Notwithstanding any terms set out herein, Warrants having any legend set forth in Section **Error! Reference source not found.** herein and held in the name of the Depository shall be in the form of Uncertificated Warrants.
- (b) Notwithstanding any other provision in this Indenture, no CDS Global Warrants may be exchanged in whole or in part for Warrants registered, and no transfer of any CDS Global Warrants in whole or in part may be registered, in the name of any person other than the Depository for such CDS Global Warrants or a nominee thereof unless:
- (i) the Depository notifies the Corporation that it is unwilling or unable to continue to act as depository in connection with the Book Entry Only Warrants and the Corporation is unable to locate a qualified successor;
  - (ii) the Corporation determines that the Depository is no longer willing, able or qualified to discharge properly its responsibilities as holder of the CDS Global Warrants and the Corporation is unable to locate a qualified successor;
  - (iii) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Corporation is unable to locate a qualified successor;
  - (iv) the Corporation determines that the Warrants shall no longer be held as Book Entry Only Warrants through the Depository;
  - (v) such right is required by applicable law, as determined by the Corporation;
  - (vi) the Warrant is Authenticated to or for the account or benefit of a U.S. Warrantholder; or
  - (vii) such registration is effected in accordance with the internal procedures of the Depository and the Warrant Agent,
- following which, Warrants for those holders requesting the same shall be registered and issued to the beneficial owners of such Warrants or their nominees as directed by the holder. The Corporation shall provide a certificate of the Corporation giving notice to the Warrant Agent of the occurrence of any event outlined in this Section 2.8(b)(i) – (vii).
- (c) Subject to the provisions of this Section 2.8, any exchange of CDS Global Warrants for Warrants that are not CDS Global Warrants may be made in whole or in part in accordance with the provisions of Section 2.14, mutatis mutandis. All such Warrants issued in

exchange for a CDS Global Warrant or any portion thereof shall be registered in such names as the Depository for such CDS Global Warrants shall direct and shall be entitled to the same benefits and subject to the same terms and conditions (except insofar as they relate specifically to CDS Global Warrants) as the CDS Global Warrants or portion thereof surrendered upon such exchange.

- (d) Every Warrant that is Authenticated upon registration or transfer of a CDS Global Warrant, or in exchange for or in lieu of a CDS Global Warrant or any portion thereof, whether pursuant to this Section 2.8, or otherwise, shall be Authenticated in the form of, and shall be, a CDS Global Warrant, unless such Warrant is registered in the name of a person other than the Depository for such CDS Global Warrant or a nominee thereof.
- (e) Notwithstanding anything to the contrary in this Indenture, subject to applicable law, the CDS Global Warrant will be issued as an Uncertificated Warrant, unless otherwise requested in writing by the Depository or the Corporation.
- (f) The rights of beneficial owners of Warrants who hold securities entitlements in respect of the Warrants through the book entry registration system shall be limited to those established by applicable law and agreements between the Depository and the Book Entry Only Participants and between such Book Entry Only Participants and the beneficial owners of Warrants who hold securities entitlements in respect of the Warrants through the book entry registration system, and such rights must be exercised through a Book Entry Only Participant in accordance with the rules and procedures of the Depository.
- (g) Notwithstanding anything herein to the contrary, neither the Corporation nor the Warrant Agent nor any agent thereof shall have any responsibility or liability for:
  - (i) the electronic records maintained by the Depository relating to any ownership interests or any other interests in the Warrants 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 Warrant represented by an electronic position in the book entry registration system (other than the Depository or its nominee);
  - (ii) maintaining, supervising or reviewing any records of the Depository or any Book Entry Only Participant relating to any such interest; or
  - (iii) 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 Book Entry Only Participant.
- (h) The Corporation may terminate the application of this Section 2.8 in its sole discretion, acting reasonably and after due consultation with the Agents, in which case all Warrants shall be evidenced by Warrant Certificates registered in the name of a person other than the Depository.

## **2.9 WARRANT CERTIFICATE**

- (a) For Warrants issued in certificated form, the form of certificate representing Warrants shall be substantially as set out in Schedule "A" hereto or such other form as is authorized from time to time by the Warrant Agent. Each Warrant Certificate shall be Authenticated



manually on behalf of the Warrant Agent and signed by any duly authorized signatory of the Corporation in accordance with the provisions of this Indenture.

- (b) The Warrant Agent shall Authenticate Uncertificated Warrants (whether upon original issuance, exchange, registration of transfer, partial payment, 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 Warrants under this Indenture. Such Authentication shall be conclusive evidence that each such Uncertificated Warrant has been duly issued 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 Warrants with respect to which this Indenture requires the Warrant Agent 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 Warrants are binding on the Corporation.
- (c) Any Warrant Certificate validly issued in accordance with the terms of this Indenture in effect at the time of issue of such Warrant Certificate shall, subject to the terms of this Indenture and applicable law, validly entitle the holder to acquire Subordinate Voting Shares, notwithstanding that the form of such Warrant Certificate may not be in the form currently required by this Indenture.
- (d) No Warrant shall be considered issued, valid or obligatory nor shall the holder thereof be entitled to the benefits of this Indenture until the Warrant has been Authenticated by the Warrant Agent. Authentication by the Warrant Agent, including by way of entry on the register, shall not be construed as a representation or warranty by the Warrant Agent as to the validity of this Indenture or of such Warrant Certificates or Uncertificated Warrants (except the due Authentication thereof) or as to the performance by the Corporation of its obligations under this Indenture and the Warrant Agent shall in no respect be liable or answerable for the use made of the Warrants or any of them or of the consideration thereof. Authentication by the Warrant Agent shall be conclusive evidence as against the Corporation that the Warrants so Authenticated have been duly issued hereunder and that the holder thereof is entitled to the benefits of this Indenture.
- (e) No Certificated Warrant shall be considered issued and Authenticated or, if Authenticated, shall be obligatory or shall entitle the holder thereof to the benefits of this Indenture, until it has been Authenticated by manual signature by or on behalf of the Warrant Agent substantially in the form of the Warrant Certificate set out in Schedule "A" hereto. Such Authentication on any such Certificated Warrant shall be conclusive evidence that such Certificated Warrant is duly Authenticated and is valid and a binding obligation of the Corporation and that the holder is entitled to the benefits of this Indenture.
- (f) No Uncertificated Warrant shall be considered issued and shall be obligatory or shall entitle the holder thereof to the benefits of this Indenture, until it has been Authenticated by entry on the register of the particulars of the Uncertificated Warrant. Such entry on the register of the particulars of an Uncertificated Warrant shall be conclusive evidence that such Uncertificated Warrant is a valid and binding obligation of the Corporation and that the holder is entitled to the benefits of this Indenture.
- (g) The Authentication by the Warrant Agent of any Warrants whether by way of entry on the register or otherwise shall not be construed as a representation or warranty by the Warrant Agent as to the validity of this Indenture or such Warrants (except the due Authentication

thereof) or as to the performance by the Corporation of its obligations under this Indenture and the Warrant Agent shall in no respect be liable or answerable for the use made of the Warrants or any of them or the proceeds thereof.

## 2.10 LEGENDS

- (a) Each CDS Global Warrant originally issued and held by the Depository, and each CDS Global Warrant issued in exchange therefor or in substitution thereof shall bear or be deemed to bear the following legend or such variations thereof as the Corporation may prescribe from time to time:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO XS FINANCIAL 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."

- (b) The Warrants and the Underlying Securities issuable upon exercise thereof have not been and will not be registered under the U.S. Securities Act or the securities laws of any state of the United States. Each Warrant Certificate originally issued for the benefit or account of a U.S. Warrantholder and each Warrant Certificate issued in exchange therefor or in substitution thereof shall bear or be deemed to bear the following legends or such variations thereof as the Corporation may prescribe from time to time:

"THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR UNDER ANY STATE SECURITIES LAWS, AND THE SECURITIES REPRESENTED HEREBY MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, ONLY (A) TO XS FINANCIAL INC. (THE "CORPORATION"), (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY (i) RULE 144, IF AVAILABLE, OR (ii) 144A UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE U.S. STATE SECURITIES LAWS, (D) IN COMPLIANCE WITH ANOTHER EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (E) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT PROVIDED THAT IN THE CASE OF TRANSFERS PURSUANT TO (C)(i) OR (D) ABOVE, A LEGAL OPINION IN FORM AND SUBSTANCE OR

SUCH OTHER EVIDENCE REASONABLY SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED TO ODYSSEY TRUST COMPANY TO THE EFFECT THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA."; and

"THIS WARRANT AND THE SECURITIES DELIVERABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THIS WARRANT MAY NOT BE EXERCISED IN THE UNITED STATES OR BY OR ON BEHALF OF, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON UNLESS THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT AND THE APPLICABLE SECURITIES LEGISLATION OF ANY SUCH STATE OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS IS AVAILABLE. "UNITED STATES" AND "U.S. PERSON" ARE AS DEFINED BY REGULATION S UNDER THE U.S. SECURITIES ACT."

provided that, if any Warrants are being sold in accordance with Rule 904 of Regulation S, the first legend may be removed by providing to the Warrant Agent, (i) a declaration in the form attached as Schedule "B" hereto (or as the Corporation may prescribe from time to time) and (ii) if required by the Warrant Agent, an opinion of counsel, of recognized standing reasonably satisfactory to the Corporation, or other evidence reasonably satisfactory to the Corporation, that the proposed transfer may be effected without registration under the U.S. Securities Act; and provided, further, that, if any Warrants are being sold pursuant to Rule 144 under the U.S. Securities Act, the legend may be removed by delivering to the Warrant Agent, an opinion of counsel of recognized standing reasonably satisfactory to the Corporation, that the legend is no longer required under applicable requirements of the U.S. Securities Act or state securities laws.

The Warrant Agent shall be entitled to request any other documents that it may require in accordance with its internal policies for the removal of the first legend set forth above.

- (c) Each Warrant Certificate originally issued in Canada or to a Canadian holder and each CDS Global Warrant originally issued in Canada and held by the Depository on the date hereof (and each such Warrant Certificate or CDS Global Warrant, as the case may be, issued in exchange therefore or in substitution thereof prior to the date that is four months and a day after the date hereof) shall bear or be deemed to bear the following legend or such variations thereof as the Corporation may prescribe from time to time:

"UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [INSERT DATE THAT IS 4 MONTHS AND A DATE AFTER DISTRIBUTION DATE]"

- (d) Notwithstanding any other provisions of this Indenture, in processing and registering transfers of Warrants, no duty or responsibility whatsoever shall rest upon the Warrant Agent to determine the compliance by any transferor or transferee with the terms of the

legends contained in this subsection **Error! Reference source not found.**, or with the relevant securities laws or regulations, and the Warrant Agent shall be entitled to assume that all transfers that are processed in accordance with this Indenture are legal and proper.

## 2.11 REGISTER OF WARRANTS

- (a) The Warrant Agent shall maintain records and accounts concerning the Warrants, whether certificated or uncertificated, which shall contain the information called for below with respect to each Warrant, together with such other information as may be required by law or as the Warrant Agent may elect to record. All such information shall be kept in one set of accounts and records which the Warrant Agent shall designate (in such manner as shall permit it to be so identified as such by an unaffiliated party) as the register of the holders of Warrants. The information to be entered for each account in the register of Warrants at any time shall include (without limitation):
- (i) the name and address of the holder of the Warrants, the date of Authentication thereof and the number of Warrants;
  - (ii) whether such Warrant is a Certificated Warrant or an Uncertificated Warrant and, if a Warrant Certificate, the unique number or code assigned to and imprinted thereupon and, if an Uncertificated Warrant, the unique number or code assigned thereto if any;
  - (iii) whether such Warrant has been cancelled; and
  - (iv) a register of transfers in which all transfers of Warrants and the date and other particulars of each transfer shall be entered.

The register shall be available for inspection by the Corporation or any holder during the Warrant Agent's regular business hours on a Business Day and upon payment to the Warrant Agent of its reasonable fees. Any Holder exercising such right of inspection shall first provide an affidavit, in form satisfactory to the Corporation and the Warrant Agent, stating the name and address of the Holder and agreeing not to use the information therein except in connection with an effort to call a meeting of Holders or to influence the voting of Holders at any meeting of Holders.

- (b) Once an Uncertificated Warrant has been Authenticated, the information set forth in the register with respect thereto at the time of Authentication may be altered, modified, amended, supplemented or otherwise changed only to reflect exercise or proper instructions to the Warrant Agent from the holder as provided herein, except that the Warrant Agent may act unilaterally to make purely administrative changes internal to the Warrant Agent and changes to correct errors. Each person who becomes a holder of an Uncertificated Warrant, by his, her or its acquisition thereof shall be deemed to have irrevocably: (i) consented to the foregoing authority of the Warrant Agent to make such minor error corrections; and, (ii) agreed to pay to the Warrant Agent, promptly upon written demand, the full amount of all loss and expense (including without limitation reasonable legal fees of the Corporation and the Warrant Agent plus interest, at an appropriate then prevailing rate of interest to the Warrant Agent) sustained by the Corporation or the Warrant Agent as a proximate result of such error if, but only if, and only to the extent that such present or former holder realized any benefit as a result of such error and could reasonably have prevented, forestalled or minimized such loss and expense by prompt

reporting of the error or avoidance of accepting benefits thereof whether or not such error is or should have been timely detected and corrected by the Warrant Agent; provided that no person who is a bona fide purchaser shall have any such obligation to the Corporation or to the Warrant Agent.

## **2.12 ISSUE IN SUBSTITUTION FOR LOST WARRANT CERTIFICATE**

- (a) If any of the Warrant Certificates shall become mutilated or lost, destroyed or stolen, the Corporation, subject to applicable law and to subsection 2.12(b), shall issue and thereupon, at the written direction of the Corporation, the Warrant Agent shall countersign and deliver a new Warrant Certificate of like date and tenor, and bearing the same legends if applicable, as the one mutilated, lost, destroyed or stolen upon surrender and in place of and upon cancellation of such mutilated Warrant Certificate, or in lieu of and in substitution for such lost, destroyed or stolen Warrant Certificate, and the substituted Warrant Certificate shall be in a form approved by the Warrant Agent and shall be entitled to the benefits hereof and shall rank equally in accordance with its terms with all other Warrant Certificates issued or to be issued hereunder.
- (b) The applicant for the issue of a new Warrant Certificate pursuant to this section 2.12 shall bear the reasonable cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Warrant Agent evidence of ownership and of the loss, destruction or theft of the Warrant Certificate so lost, destroyed or stolen satisfactory to the Corporation and to the Warrant Agent in their sole discretion, in each case acting reasonably, and such applicant may also be required to furnish an indemnity or surety bond in amount and form satisfactory to the Corporation and the Warrant Agent in their sole discretion, in each case acting reasonably, and shall pay the reasonable charges of the Corporation and the Warrant Agent in connection therewith.

## **2.13 REGISTER FOR WARRANTS**

The Corporation shall cause to be kept by and at the Warrant Agency which is the principal transfer office of the Warrant Agent in the City of Calgary, Alberta and in such other place or places as the Corporation with the approval of the Warrant Agent may designate, a securities register in which shall be entered the names and addresses of Holders and the other particulars, prescribed by law, of the Warrants held by them. The Corporation shall also cause to be kept by and at such office the register of transfers, and may also cause to be kept by the Warrant Agent or such other registrar or registrars and at such other place or places as the Corporation may designate with the approval of the Warrant Agent, branch registers of transfers (including, without limitation, branch registers of transfers at each of the other Warrant Agencies) in which shall be recorded the particulars of the transfers of Warrants registered in that branch register of transfers.

## **2.14 TRANSFER OF WARRANTS**

- (a) Subject to subsection 2.14(c) and such reasonable requirements as the Warrant Agent may prescribe and all applicable securities legislation and requirements of regulatory authorities, the Warrants may be transferred on the register kept at the Warrant Agency by the Holder or its legal representatives or its attorney duly appointed by an instrument in writing in form and manner of execution satisfactory to the Warrant Agent only upon (i) in the case of a Warrant Certificate, the surrendering of the relevant Warrant Certificate with the transfer form forming part thereof duly completed and signed; or (ii) in the case of Book Entry Only Warrants, in accordance with procedures prescribed by the Depository

under the book entry registration system, and upon the person surrendering the same meeting the requirements set forth above, the Warrant Agent shall reflect the transfer and issue to the transferee a Warrant Certificate representing the Warrants transferred or Authenticate and deliver a Warrant Certificate upon request that part of the CDS Global Warrant be certificated, as applicable.

- (b) If a Warrant Certificate tendered for transfer bears the first legend set forth in Section 2.10(b), the Warrant Agent shall not register such transfer unless the transferor has provided the Warrant Agent with the Warrant Certificate and: (i) the transfer is made to the Corporation; (ii) the transfer is made outside of the United States in a transaction meeting the requirements of Rule 904 of Regulation S, and in compliance with applicable local laws and regulations, and the transferor delivers to the Corporation and the Warrant Agent a declaration substantially in the form set forth in Schedule “B” to this Warrant Indenture, or in such other form as the Corporation may from time to time prescribe, together with such other evidence of the availability of an exemption (which may, without limitation, include an opinion of counsel, of recognized standing reasonably satisfactory to the Corporation and the Warrant Agent) as the Warrant Agent may reasonably require; (iii) the transfer is made pursuant to the exemption from the registration requirements of the U.S. Securities Act provided by Rule 144 thereunder, if available, and in each case in accordance with any applicable state securities laws; or (iv) the transfer is made in another transaction that does not require registration under the U.S. Securities Act or any applicable state securities laws; provided that, it has prior to any transfer pursuant to Section 2.14(b)(iii) or Section 2.14(b)(iv) furnished to the Warrant Agent and the Corporation an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Corporation, to such effect. In relation to a transfer under (iii) or (iv) above, unless the Corporation and the Warrant Agent receive an opinion of counsel, of recognized standing, reasonably satisfactory to the Corporation in form and substance to the effect that the U.S. restrictive legend set forth in subsection Section 2.10(b) is no longer required on the Warrant Certificates representing the transferred Warrants, the Warrant Certificates received by the transferee will continue to bear the legend set forth in Section 2.10(b).
- (c) No transfer of a Warrant shall be valid (i) unless made in accordance with the provisions hereof, (ii) until, upon compliance with such reasonable requirements as the Warrant Agent may prescribe, such transfer is recorded on the register maintained by the Warrant Agent pursuant to subsection (a) of this section 2.14, and (iii) until all governmental or other charges arising by reason of such transfer have been paid.

## **2.15 OWNERSHIP OF WARRANTS**

- (a) The Corporation and the Warrant Agent may deem and treat the registered Holder of any Warrant as the absolute owner of the Warrants represented thereby for all purposes and the Corporation and the Warrant Agent shall not be affected by any notice or knowledge to the contrary, except where the Corporation or the Warrant Agent is required to take notice by statute or by order of a court of competent jurisdiction. For greater certainty, subject to applicable law, neither the Corporation nor the Warrant Agent shall be bound to take notice of or see to the execution of any trust, whether express, implied or constructive, in respect of any Warrant, and may transfer any Warrant on the direction of the person registered as Holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.

- (b) Subject to the provisions of this Indenture and applicable law, each Holder shall be entitled to the rights and privileges attaching to the Warrants held thereby. The exercise of the Warrants in accordance with the terms hereof and the receipt by any such Holder of Subordinate Voting Shares pursuant thereto shall be a good discharge to the Corporation and the Warrant Agent with respect to such Warrants and neither the Corporation nor the Warrant Agent shall be bound to inquire into the title of any such Holder except where the Corporation or the Warrant Agent is required to take notice by statute or by order of a court of competent jurisdiction.

## **2.16 CANCELLATION**

All Warrant Certificates surrendered pursuant to Article 3 or transferred or exchanged pursuant to Article 2 **Error! Reference source not found.** shall be cancelled by the Warrant Agent, and, upon such circumstances, all such Uncertificated Warrants shall be deemed cancelled and so noted on the register by the Warrant Agent. Upon request by the Corporation, the Warrant Agent shall furnish to the Corporation a cancellation certificate identifying the Warrant Certificates so cancelled, the number of Warrants evidenced thereby, the number of Subordinate Voting Shares, if any, issued pursuant to such Warrants and the details of any Warrant Certificates issued in substitution or exchange for such Warrant Certificates cancelled.

## **2.17 EXCHANGE OF WARRANT CERTIFICATES**

- (a) Warrant Certificates, representing Warrants entitling the Holders to receive any specified number of Subordinate Voting Shares, may, prior to the Expiry Time and upon compliance with the reasonable requirements of the Warrant Agent, be exchanged for another Warrant Certificate or Warrant Certificates, bearing the same legends if applicable, entitling the Holder thereof to receive in the aggregate the same number of Subordinate Voting Shares as are issuable under the Warrant Certificate or Warrant Certificates so exchanged.
- (b) Warrant Certificates may be exchanged only at the Warrant Agency or at any other place that is designated by the Corporation with the approval of the Warrant Agent. Any Warrant Certificates tendered for exchange shall be surrendered to the Warrant Agent and shall, upon the valid completion of the exchange in accordance with the terms of this Indenture, be cancelled.
- (c) Except as otherwise herein provided, the Warrant Agent shall charge to the Holder requesting an exchange a reasonable sum for each new Warrant Certificate issued in exchange for Warrant Certificate(s); and payment of such charges and reimbursement to the Warrant Agent or the Corporation for any and all taxes or governmental or other charges required to be paid shall be made by such Holder as a condition precedent to such exchange.
- (d) Warrant Certificates exchanged for Warrant Certificates that bear the applicable legend set forth in **Error! Reference source not found.** shall bear the same legend.

## **ARTICLE 3** **EXERCISE OF WARRANTS**

### **3.1 RIGHTS OF EXERCISE OF WARRANTS**

Subject to the further provisions hereof, the Warrants may be exercised at any time up to the Expiry Time.

### 3.2 METHOD OF EXERCISE OF WARRANTS

- (a) Subject always to the provisions of this Article 3 and compliance by both the Corporation and the Holder with applicable law, the Holder of any Certificated Warrant may exercise the right thereby conferred on him to acquire one Subordinate Voting Share (subject to adjustment pursuant to Article 4) in respect of each Warrant held by surrendering to the Warrant Agent at the Warrant Agency the Warrant Certificate(s) held by him, together with (i) the exercise form forming part of the Warrant Certificate (the "**Exercise Form**") duly completed and executed by the Holder or his executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and manner satisfactory to the Warrant Agent, acting reasonably; and (ii) a certified cheque, bank draft or money order in lawful money of Canada, payable to or to the order of the Corporation in an amount equal to \$0.45 per Subordinate Voting Share (the "**Exercise Price**") multiplied by the number of Subordinate Voting Shares subscribed for pursuant to such Exercise Form. A Warrant Certificate with the duly completed and executed Exercise Form and payment of the applicable Exercise Price shall be deemed to be surrendered only upon personal delivery thereof to or, if sent by mail or other means of transmission, upon actual receipt thereof by, the Warrant Agent at the Warrant Agency.
- (b) In addition to completing the Exercise Form attached to the Warrant Certificate(s), a U.S. Warrantheader must provide an opinion of counsel, of recognized standing, or other evidence in form and substance reasonably satisfactory to the Corporation, that the exercise is exempt from the registration requirements of the U.S. Securities Act and applicable securities laws of any state of the United States.
- (c) The Exercise Form shall be executed as set out in subsection 3.2(a) and shall specify the number of Subordinate Voting Shares which the Holder wishes to acquire (being not more than that number which he is entitled to acquire pursuant to the Warrant Certificate(s) so surrendered). Such Subordinate Voting Shares shall be issued in the name of the Holder.
- (d) A beneficial owner of Warrants issued in uncertificated form evidenced by a security entitlement in respect of Warrants in the book entry registration system who desires to exercise his or her Warrants must do so by causing a Book Entry Only Participant to deliver to the Depository on behalf of the entitlement holder, notice of the owner's intention to exercise Warrants in a manner acceptable to the Depository. Forthwith upon receipt by the Depository of such notice, as well as payment for the aggregate Exercise Price, the Depository shall deliver to the Warrant Agent confirmation of its intention to exercise Warrants (a "**Confirmation**") in a manner acceptable to the Warrant Agent, including by electronic means through a book based registration system. An electronic exercise of the Warrants initiated by the Book Entry Only Participant through a book based registration system shall constitute a representation to both the Corporation and the Warrant Agent that the beneficial owner at the time of exercise of such Warrants is not a U.S. Warrantheader.
- (e) Payment representing the aggregate Exercise Price must be provided to the appropriate office of the Book Entry Only Participant in a manner acceptable to it. A notice in form acceptable to the Book Entry Only Participant and payment from such beneficial holder should be provided to the Book Entry Only Participant sufficiently in advance so as to permit the Book Entry Only Participant to deliver notice and payment to the Depository and for the Depository in turn to deliver notice and payment to the Warrant Agent prior to Expiry Time. The Depository will initiate the exercise by way of the Confirmation and forward the aggregate Exercise Price electronically to the Warrant Agent for prompt



onward payment by the Warrant Agent to the Corporation which the Warrant Agent will promptly pay to the Corporation, and the Warrant Agent will execute the exercise by issuing to the Depository through the book entry registration system the Subordinate Voting Shares to which the exercising beneficial owner is entitled pursuant to the exercise. Any expense associated with the exercise process will be for the account of the entitlement holder exercising the Warrants and/or the Book Entry Only Participant exercising the Warrants on its behalf.

- (f) By causing a Book Entry Only Participant to deliver notice to the Depository, a beneficial owner shall be deemed to have irrevocably surrendered his or her Warrants so exercised and appointed such Book Entry Only Participant to act as his or her exclusive settlement agent with respect to the exercise of the Warrants and the receipt of Subordinate Voting Shares in connection with the obligations arising from such exercise.
- (g) Any notice which the Depository determines to be incomplete, not in proper form or not duly executed shall for all purposes be void and of no effect, and the exercise to which it relates shall be considered for all purposes not to have been exercised thereby. A failure by a Book Entry Only Participant to exercise or to give effect to the settlement thereof in accordance with the beneficial owner's instructions will not give rise to any obligations or liability on the part of the Corporation or Warrant Agent to the Book Entry Only Participant or the beneficial owner.
- (h) In the event that a Holder has not exercised his Warrants in accordance with the provisions hereof prior to the Expiry Time, all Warrants then held by such Holder shall expire and be of no further force and effect as at the Expiry Time.
- (i) The Warrants and the Underlying Securities have not been and will not be registered under the U.S. Securities Act and applicable state securities laws and the Corporation has no current intention to effect such registration. Accordingly, notwithstanding any other provision hereof, the Warrants may not be issued or transferred to or for the account or benefit of a U.S. Person or a person in the United States.
- (j) If the principal transfer office of the Warrant Agent in the city where the Warrant Agency is situate is for any reason not available to act in connection with the exchange of Warrant Certificates or exercise of Warrants as contemplated by this Indenture, the Corporation and the Warrant Agent shall arrange for another office in such city to act in connection with the exchange of Warrant Certificates and exercise of Warrants and shall give notice of the change of such office to the Holders.
- (k) If the form of Exercise Notice set forth in the Warrant Certificate shall have been amended, the Corporation shall cause the amended Exercise Notice to be forwarded to all Holders.

### **3.3 U.S. RESTRICTIONS ON EXERCISE; LEGENDED CERTIFICATES**

- (a) Warrants which bear the first legend set forth in Section 2.10(b) may be exercised in the United States or by or on behalf of a U.S. Person, and Subordinate Voting Shares issued upon exercise of any such Warrants may be delivered to an address in the United States, provided that (a) the person exercising the Warrants is an original U.S. Purchaser; or (b) the person exercising the Warrants provides a legal opinion or other evidence in form and substance reasonably satisfactory to the Corporation and the Warrant Agent which

confirms that the issuance of Subordinate Voting Shares upon exercise of any such Warrants is in compliance with the U.S. Securities Act and applicable state laws.

- (b) Certificates representing Subordinate Voting Shares issued upon the exercise of Warrants which bear the first legend set forth in Section 2.10(b) and which are issued and delivered pursuant to Section 3.3(a) shall bear the following legend:

"THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR UNDER ANY STATE SECURITIES LAWS, AND THE SECURITIES REPRESENTED HEREBY MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, ONLY (A) TO XS FINANCIAL INC. (THE "CORPORATION"), (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY (i) RULE 144, IF AVAILABLE, OR (ii) 144A UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE U.S. STATE SECURITIES LAWS, (D) IN COMPLIANCE WITH ANOTHER EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (E) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT PROVIDED THAT IN THE CASE OF TRANSFERS PURSUANT TO (C)(i) OR (D) ABOVE, A LEGAL OPINION IN FORM AND SUBSTANCE OR SUCH OTHER EVIDENCE REASONABLY SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED TO ODYSSEY TRUST COMPANY TO THE EFFECT THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA."

provided that, if any Subordinate Voting Shares are being sold in accordance with Rule 904 of Regulation S, the legend may be removed by providing to the registrar and transfer agent, (i) a declaration in the form attached as Schedule "B" hereto (or as the Corporation may prescribe from time to time) and (ii) if required by the registrar and transfer agent, an opinion of counsel, of recognized standing reasonably satisfactory to the Corporation, or other evidence reasonably satisfactory to the Corporation, that the proposed transfer may be effected without registration under the U.S. Securities Act; and provided, further, that, if any Subordinate Voting Shares are being sold pursuant to Rule 144 under the U.S. Securities Act, the legend may be removed by delivering to the registrar and transfer agent, an opinion of counsel of recognized standing reasonably satisfactory to the Corporation, that the legend is no longer required under applicable requirements of the U.S. Securities Act or state securities laws.

### **3.4 LEGENDED CERTIFICATES**

- (a) Certificates representing Subordinate Voting Shares issued upon the exercise of Warrant Certificates (and issued in substitution or exchange therefor) prior to the date that is four months and one day after the date of issuance shall bear the following legend:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [INSERT DATE THAT IS 4 MONTHS AND A DAY AFTER DISTRIBUTION DATE].”

### **3.5 EFFECT OF EXERCISE OF WARRANTS**

- (a) If the Warrants are duly exercised in accordance with sections 3.1 and 3.2, the Underlying Securities subscribed for shall be deemed to have been issued and the person or persons to whom such Underlying Securities are to be issued shall be deemed to have become the holder or holders of record of such Underlying Securities on the Exercise Date unless the transfer registers for the Subordinate Voting Shares shall be closed on such date, in which case the Underlying Securities subscribed for shall be deemed to have been issued and such person or persons shall be deemed to have become the holder or holders of record of the same on the date on which such transfer registers are re-opened.
- (b) In the case of Warrants which are exercised in accordance with the provisions of sections 3.1 and 3.2, within five (5) Business Days after the Exercise Date of such Warrants, the Corporation shall cause to be delivered to the person in whose name the Underlying Securities so subscribed for are to be delivered, as specified in the Exercise Form, at the address specified in such Exercise Form, or, if so specified in such Exercise Form, cause to be held for such person for pick-up at the Warrant Agency, certificates representing the Underlying Securities to be issued pursuant to such Exercise Form, registered in such name.

### **3.6 PARTIAL EXERCISE OF WARRANTS**

- (a) The Holder of any Warrants may exercise his right to acquire Subordinate Voting Shares in part and may thereby acquire a number of Subordinate Voting Shares less than the aggregate number which he is entitled to acquire pursuant to the Warrant(s) in connection therewith. In the event of any acquisition of a number of Subordinate Voting Shares less than the number which the Holder is entitled to acquire, he shall, upon exercise of any Certificated Warrants, be entitled to receive, without charge therefor, a new Warrant Certificate(s) bearing the same legends, as applicable, representing the balance of the Subordinate Voting Shares which he was entitled to acquire pursuant to the surrendered Warrant Certificate(s) and which were not then acquired.
- (b) Notwithstanding anything herein contained including any adjustment provided for in Article 4, the Corporation shall not be required, upon the exercise of any Warrants, to issue fractions of Subordinate Voting Shares or to distribute certificates which evidence the same. Any fractional Subordinate Voting Shares to which a Holder is entitled shall be aggregated to form whole Subordinate Voting Shares with any remaining fractional Subordinate Voting Shares rounded down to a whole Subordinate Voting Share.

### **3.7 CANCELLATION OF WARRANTS**

All Warrant Certificates surrendered to the Warrant Agent pursuant hereto (including those exercised and surrendered hereunder) shall be cancelled and, after the expiry of any period of retention prescribed by law, destroyed by the Warrant Agent, and the Warrant Agent shall furnish the Corporation on request with a destruction certificate identifying the Warrant Certificates so destroyed, the number of Warrants evidenced thereby and the number of Subordinate Voting Shares issued thereunder.

### **3.8 WARRANTS VOID AFTER THE EXPIRY TIME**

No Holder shall have any further rights under this Indenture or the Warrant Certificates (other than the right to receive Subordinate Voting Shares in respect of Warrants duly exercised prior to or at the Expiry Time, as the case may be), after the Expiry Time and the Warrants shall be null and void and of no effect.

### **3.9 ACCOUNTING AND RECORDING**

- (a) The Warrant Agent shall promptly notify the Corporation with respect to Warrants exercised and forward to the Corporation (or into an account or accounts of the Corporation as designated by the Corporation) all monies received for the purchase of Underlying Securities. All such monies, and any securities or other instruments, from time to time received by the Warrant Agent, shall be received on behalf of the Corporation.
- (b) The Warrant Agent shall record the particulars of Warrants exercised which shall include the names and addresses of the Persons who become holders of Subordinate Voting Shares on exercise and the Exercise Date. Within five (5) Business Days of each Exercise Date, the Warrant Agent shall provide such particulars in writing to the Corporation.

### **3.10 SECURITIES RESTRICTIONS**

- (a) Notwithstanding anything herein contained, Underlying Securities shall only be issued by the Corporation (upon exercise of the Warrants) in compliance with the securities laws of any applicable jurisdiction.

## **ARTICLE 4**

### **ADJUSTMENT OF NUMBER OF SUBORDINATE VOTING SHARES**

#### **4.1 ADJUSTMENT UPON SUBORDINATE VOTING SHARE REORGANIZATION OR CAPITAL REORGANIZATION**

The acquisition rights in effect at any date attaching to the Warrants shall be subject to adjustment from time to time as follows:

- (a) If, at any time prior to the Expiry Time, the Corporation shall:
  - (i) subdivide, redivide or change its then the outstanding Subordinate Voting Shares into a greater number of shares; or
  - (ii) consolidate, reduce or combine its then outstanding Subordinate Voting Shares into a lesser number of shares; or
  - (iii) issue Subordinate Voting Shares or securities exchangeable or exercisable for, or convertible into, Subordinate Voting Shares ("**Convertible Securities**") to all or substantially all of the holders of the Subordinate Voting Shares as a stock dividend or other distribution;

(any such event being herein called a "**Subordinate Voting Share Reorganization**"), then the number of Subordinate Voting Shares that a Holder is entitled to upon exercise shall be adjusted, effective immediately after the effective date or record date at which holders of Subordinate Voting Shares are determined for the purposes of the Subordinate Voting

Share Reorganization, by multiplying the number of Subordinate Voting Shares that a Holder was entitled to upon exercise of Warrants immediately prior to such effective date or record date by a fraction of which:

- (i) the numerator shall be the number of Subordinate Voting Shares outstanding immediately after giving effect to such Subordinate Voting Share Reorganization, including, without limitation, in the case of a distribution of securities exchangeable for or convertible into Subordinate Voting Shares, the number of Subordinate Voting Shares that would have been outstanding if such securities had been exchanged for or converted into Subordinate Voting Shares on such date; and
  - (ii) the denominator shall be the number of Subordinate Voting Shares outstanding on such effective date or record date before giving effect to such Subordinate Voting Share Reorganization.
- (b) To the extent that any adjustment in the number of Subordinate Voting Shares issuable upon exercise of the Warrants occurs pursuant to subsection 4.1(a) as a result of the fixing by the Corporation of a record date for the distribution of securities exchangeable for or convertible into Subordinate Voting Shares, the number of Subordinate Voting Shares to which a Holder is entitled on the exercise of his Warrants shall be readjusted immediately after the expiration of any relevant exchange or conversion right to the number of Subordinate Voting Shares to which such Holder is entitled on the exercise of his Warrants which would then be in effect based upon the number of Subordinate Voting Shares actually issued and remaining issuable after such expiration.
- (c) (i) If, at any time prior to the Expiry Time, there occurs:
- (A) a reclassification or re-designation of the Subordinate Voting Shares or any other capital reorganization; or
  - (B) a consolidation, merger or amalgamation of the Corporation with or into any other corporation which results in the cancellation, reclassification or re-designation of the Subordinate Voting Shares or a change or conversion of the Subordinate Voting Shares into other shares or securities or the transfer of all or substantially all of the assets of the Corporation to another corporation or entity or the Corporation being controlled (within the meaning of the *Income Tax Act* (Canada)) by another corporation or entity;

(any such event being herein called a "**Capital Reorganization**"), then, immediately upon the effective time of such Capital Reorganization and at all times thereafter, a Holder who exercises his right to acquire Subordinate Voting Shares shall be entitled to be issued and receive and shall accept for the same aggregate consideration, upon such exercise, in lieu of the number of Subordinate Voting Shares to which he was theretofore entitled upon exercise of his Warrants the kind and aggregate number of shares or other securities or property of the Corporation or of the Corporation or other entity resulting from such Capital Reorganization or any other corporation that a Holder would have been entitled to be issued and receive upon such Capital Reorganization if, immediately prior to the effective time thereof, such Holder had been the registered holder of the number of Subordinate Voting Shares to which he was theretofore entitled upon exercise of his Warrants.

If necessary as a result of any Capital Reorganization, appropriate adjustments shall be made in the application of the provisions of this section with respect to the rights and interest thereafter of the Holders to the end that the provisions set forth in this section shall thereafter correspondingly be made applicable as nearly as may reasonably be practicable in relation to any shares or other securities or property thereafter issuable and deliverable upon the exercise of the Warrants. Any such adjustment shall be made by and set forth in an agreement supplemental hereto approved by the Board of Directors and by the Holders.

- (ii) The Corporation shall not complete or facilitate a Capital Reorganization if the effect of such transaction is that:
  - (A) all or substantially all of the assets of the Corporation become the property of, or are under the control of, or the Corporation is controlled (within the meaning of the *Income Tax Act* (Canada)) by another person (an "**Acquiring Person**"); and
  - (B) holders of Subordinate Voting Shares receive any other security in replacement of, or in addition to, or in consideration for their Subordinate Voting Shares; unless, at or prior to the effective time of such Capital Reorganization, the Acquiring Person agrees to be bound by the terms of this Indenture by executing and delivering such supplemental indenture, warrant or other document as may be satisfactory to the Corporation, acting reasonably.

#### 4.2 ADJUSTMENT UPON RIGHTS OFFERING

- (a) If and whenever at any time from the date hereof and prior to the Expiry Time, the Corporation fixes a record date for the issuance of rights, options or warrants to all or substantially all the holders of Subordinate Voting Shares pursuant to which those holders are entitled to subscribe for, purchase or otherwise acquire Subordinate Voting Shares or Convertible Securities within a period of not more than 45 days from such record date at a price per share, or at a conversion price per share, of less than 95% of the Current Market Price on such record date (any such issuance being herein called a "**Rights Offering**" and the Subordinate Voting Shares that may be acquired in exercise of the Rights Offering, or upon conversion of the Convertible Securities offered by the Rights Offering, being herein called the "**Offered Shares**"), the number of Subordinate Voting Shares issuable upon exercise of a Warrant shall be adjusted effective immediately after the applicable record date to a number that is the product of (1) the number of Subordinate Voting Shares issuable upon the exercise of a Warrant in effect on the record date and (2) a fraction:
  - (i) the numerator of which shall be the sum of (a) the number of Subordinate Voting Shares outstanding on the record date plus (b) the number of Offered Shares offered pursuant to the Rights Offering or the maximum number of Offered Shares into which the Convertible Securities so offered pursuant to the Rights Offering may be converted, as the case may be; and
  - (ii) the denominator of which shall be the sum of:
    - (A) the number of Subordinate Voting Shares outstanding on the record date; and

- (B) the number arrived at when (I) either the product of (a) the number of Offered Shares so offered and (b) the price at which those shares are offered, or the product of (c) the conversion price thereof and (d) the maximum number of Offered Shares for or into which the Convertible Securities so offered pursuant to the Rights Offering may be converted, as the case may be, is divided by (II) the Current Market Price of the Subordinate Voting Shares on the record date.
- (b) Any Offered Shares owned by or held for the account of the Corporation or a Subsidiary shall be deemed not to be outstanding for the purpose of any such computation pursuant to Section 4.2(a); if all the rights, options or warrants are not so issued or if all rights, options or warrants are not exercised prior to the expiration thereof, the number of Subordinate Voting Shares issuable upon exercise of a Warrant shall be readjusted to number in effect immediately prior to the record date, and such number shall be further adjusted based upon the number of Offered Shares (or Convertible Securities that are convertible into Offered Shares) actually delivered upon the exercise of the rights, options or warrants, as the case may be, but subject to any other adjustment required hereunder by reason of any event arising after that record date.
- (c) If and whenever at any time from the date hereof and prior to the Expiry Time, the Corporation issues or distributes to all or substantially all the holders of Subordinate Voting Shares, (i) shares of any class other than Subordinate Voting Shares, or (ii) rights, options or warrants other than rights, options or warrants exercisable within forty-five (45) days from the date of issue thereof at a price, or at a conversion price, of at least 95% of the Current Market Price at the record date for such distribution, or (iii) evidences of indebtedness, or (iv) any other cash, securities or other property or assets and that issuance or distribution is not adjusted pursuant to subsection 4.1(c) or a Rights Offering (any of those non-excluded events being herein called a "**Special Distribution**"), the number of Subordinate Voting Shares issuable upon exercise of a Warrant shall be adjusted effective immediately after the record date at which the Holders of Subordinate Voting Shares are determined for purposes of the Special Distribution to a number that is the product of (1) the number of Subordinate Voting Shares issuable upon exercise of a Warrant in effect on the record date and (2) a fraction:
- (A) the numerator of which shall be the product of (I) the sum of the number of Subordinate Voting Shares outstanding on the record date plus the number of Subordinate Voting Shares which the Holders would be entitled to receive upon exercise of all their outstanding Warrants if they were exercised on the record date and (II) the Current Market Price thereof on that date; and
- (B) the denominator of which shall be:
- (1) the product of (I) the sum of the number of Subordinate Voting Shares outstanding on the record date plus the number of Shares which the Holders would be entitled to receive upon exercise of all their outstanding Warrants if they were exercised on the record date and (II) the Current Market Price thereof on the earlier of such record date and the date on which the Corporation announces its intention to make such Special Distribution;

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- (2) the aggregate fair market value, as determined by the board, whose determination shall be conclusive, absent manifest error, of the shares, rights, options, warrants, evidences of indebtedness or other assets issued or distributed in the Special Distribution, provided that no such adjustment shall be made if the result of such adjustment would be to decrease the number of Subordinate Voting Shares issuable in effect immediately before such record date.
- (ii) Any Subordinate Voting Shares owned by or held for the account of the Corporation shall be deemed not to be outstanding for the purpose of any such computation; to the extent that the distribution of shares, rights, options, warrants, evidences of indebtedness or assets is not so made or to the extent that any rights, options or warrants so distributed are not exercised, the number of Subordinate Voting Shares issuable upon exercise of a Warrant shall be readjusted to the number that would then be in effect based upon shares, rights, options, warrants, evidences of indebtedness or assets actually distributed or based upon the number of Subordinate Voting Shares or Convertible Securities actually delivered upon the exercise of the rights, options or warrants, as the case may be, but subject to any other adjustment required hereunder by reason of any event arising after the record date.

#### **4.3 ENTITLEMENT TO SHARES AND OTHER SECURITIES ON EXERCISE OF WARRANTS**

All shares of any class or other securities which a Holder is at the time in question entitled to receive on the exercise of his Warrants, whether or not as a result of adjustments made pursuant to this Article 4, shall, for the purposes of the interpretation of this Indenture, be deemed to be shares or other securities which such Holder is entitled to acquire pursuant to such Warrants.

#### **4.4 NO ADJUSTMENT FOR STOCK OPTIONS, ETC.**

Notwithstanding anything in this Article 4, no adjustment shall be made in the acquisition rights attached to the Warrants if the issue of Subordinate Voting Shares, rights, options, warrants or securities exchangeable or convertible into Subordinate Voting Shares, is being made pursuant to this Indenture or pursuant to any stock option or stock purchase plan in force from time to time for directors, officers or employees of the Corporation, or being made to satisfy existing instruments issued and outstanding as of the date of this Indenture.

#### **4.5 DETERMINATION BY INDEPENDENT FIRM**

In the event of any question arising with respect to the adjustments provided for in this Article 4, including the failure to adjust, such question shall be conclusively determined by an independent firm of chartered public accountants other than the Corporation's Auditors, who shall have access to all necessary records of the Corporation, and such determination shall be binding upon the Corporation, the Warrant Agent, all holders and all other persons interested therein.



#### **4.6 PROCEEDINGS PRIOR TO ANY ACTION REQUIRING ADJUSTMENT**

As a condition precedent to the taking of any action which would require an adjustment in any of the acquisition rights pursuant to any of the Warrants, including the number of Subordinate Voting Shares which are to be received upon the exercise thereof, the Corporation shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation has sufficient authorized capital and that the Corporation may validly and legally issue as fully-paid and non-assessable all the shares, warrants and other securities which the holders of such Warrants are entitled to receive on the full exercise thereof in accordance with the provisions hereof.

#### **4.7 ACTION REQUIRING ADJUSTMENT**

In case the Corporation, after the date hereof, shall take any action affecting the Subordinate Voting Shares, other than the actions described in this Article 4 which, in the opinion of the Directors or the Warrant Agent would materially affect the rights of the Holders and/or the acquisition rights of the Holders, then that number of Subordinate Voting Shares which are to be received upon the exercise of the Warrants shall be adjusted in such manner, if any, and at such time, by action of the Directors, in their discretion as they may reasonably determine to be equitable to the Holders in such circumstances, subject to the prior consent of the CSE or any other exchange on which the Corporation's securities are then listed.

#### **4.8 CERTIFICATE OF ADJUSTMENT**

The Corporation shall from time to time immediately after the occurrence of any event which requires an adjustment or readjustment as provided in Article 4, deliver a certificate of the Corporation to the Warrant Agent and notice to the Holders specifying the nature of the event requiring the same and the amount of the adjustment or readjustment necessitated thereby and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based which certificate shall be supported by a certificate of the Corporation's Auditors verifying such calculation.

#### **4.9 NOTICE OF SPECIAL MATTERS**

The Corporation covenants with the Warrant Agent that, so long as any Warrant remains outstanding, it shall send notice to the Warrant Agent and to the Holders in accordance with Article 10 of any intention to fix a record date that is prior to the Expiry Time for the issuance of rights, options or warrants (other than the Warrants) to all or substantially all the holders of its outstanding Subordinate Voting Shares. Such notice shall specify the particulars of such event and the record date for such event, provided that the Corporation shall only be required to specify in the notice such particulars of the event as shall have been fixed and determined on the date on which the notice is given. The notice shall be sent in each case not less than five days prior to such applicable record date. If notice has been given and the adjustment is not then determinable, the Corporation shall promptly, after the adjustment is determinable, file with the Warrant Agent a computation of the adjustment and give notice to the Holders of such adjustment computation.

#### **4.10 NO ACTION AFTER NOTICE**

The Corporation covenants with the Warrant Agent that it will not close its transfer books or take any other corporate action which might deprive the Holder of a Warrant of the opportunity to exercise its right of acquisition pursuant thereto during the period of five days after the giving of the notices set forth in section 4.9.

#### **4.11 PROTECTION OF WARRANT AGENT**

The Warrant Agent:

- (a) shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment contemplated by this Article 4, 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 Subordinate Voting Shares or any shares or other securities or property which may at any time be issued or delivered upon the exercise of the rights attaching to any Warrant;
- (c) shall not be responsible for any failure of the Corporation to issue, transfer or deliver Subordinate Voting Shares or certificates for the same upon the surrender of any Warrants for the purpose of the exercise of such rights or to comply with any of the covenants contained in this Article 4;
- (d) shall not incur any liability or responsibility whatsoever or be in any way responsible for the consequences of any breach on the part of the Corporation of any of the representations, warranties or covenants herein contained or of any acts of the directors, officers, employees, agents or servants of the Corporation; and
- (e) shall be entitled to act and rely upon the certificates or adjustment calculations of the Corporation and the auditor of the Corporation and any other documents filed by the Corporation pursuant to Section 4.8, without verification or liability.

#### **4.12 ADJUSTMENT TO EXERCISE PRICE**

If at any time after the date hereof and prior to the Expiry Time any adjustment or readjustment in the number of Subordinate Voting Shares issuable upon exercise of the Warrants shall occur as a result of:

- (a) a Subordinate Voting Share Reorganization pursuant to subsection 4.1(a) or (b);
- (b) a Rights Offering pursuant to subsection 4.2(a) or (b); or
- (c) a Special Distribution pursuant to subsection 4.2(c),

then the Exercise Price payable upon the subsequent exercise of the Warrants shall be simultaneously adjusted by multiplying the Exercise Price in effect immediately prior to such adjustment by a fraction which shall be the reciprocal of the fraction employed in the adjustment of the number of Subordinate Voting Shares issuable upon exercise of the Warrants.

#### **4.13 ADJUSTMENTS CUMULATIVE**

The adjustments provided in this Article 4 shall be cumulative and such adjustments shall be made successively whenever an event referred to herein shall occur.

**ARTICLE 5**  
**PURCHASES BY THE CORPORATION**

**5.1 OPTIONAL PURCHASE BY THE CORPORATION**

Subject to compliance with securities legislation and approval of applicable regulatory authorities, the Corporation may from time to time purchase on any stock exchange, in the open market, by private contract or otherwise any of the Warrants. Any such purchase shall be made at the lowest price or prices at which such Warrants are then obtainable (and agreed by the sellers of such Warrants), plus reasonable costs of purchase, and may be made in such manner, from such Persons, and on such other terms as the Corporation and the sellers of such Warrants may agree. In the case of Certificated Warrants, Warrant Certificates representing the Warrants purchased pursuant to this Section 5.1 shall forthwith be delivered to and cancelled by the Warrant Agent and reflected accordingly on the register of Warrants. In the case of Uncertificated Warrants, the Warrants purchased pursuant to this Section 5.1 shall be reflected accordingly on the register of Warrant and in accordance with procedures prescribed by the Depository under the book entry registration system.

**ARTICLE 6**  
**COVENANTS OF THE CORPORATION**

**6.1 ISSUANCE OF SUBORDINATE VOTING SHARES**

The Warrants, when issued as herein provided, shall be valid and enforceable against the Corporation and, subject to the provisions of this Indenture, the Corporation shall cause the Subordinate Voting Shares to be acquired pursuant to the valid exercise of Warrants under this Indenture to be duly issued and delivered in accordance with the Warrant Certificates and Uncertificated Warrants, as applicable, and the terms hereof. At all times prior to the Expiry Date, while any of the Warrants are outstanding, the Corporation shall reserve and there shall be conditionally allotted but unissued out of its authorized capital that number of Subordinate Voting Shares sufficient to enable the Corporation to meet its obligations hereunder. All Subordinate Voting Shares issued pursuant to the exercise of the Warrants shall be issued as fully paid and non-assessable. The Corporation shall make all requisite filings, and pay all applicable fees, under applicable Securities Laws to report the exercise of the Warrants.

As long as any Warrants remain outstanding the Corporation covenants to the Warrant Agent for the benefit of the Holders as follows:

- (a) it will maintain its corporate existence and carry on and conduct its business in a prudent manner in accordance with industry standards and good business practice;
- (b) it will cause the Subordinate Voting Shares from time to time acquired pursuant to the exercise of the Warrants to be duly issued and delivered in accordance with the Warrants and the terms hereof;
- (c) it will use reasonable commercial efforts to ensure that all Subordinate Voting Shares outstanding or issuable from time to time (including without limitation the Subordinate Voting Shares issuable on the exercise of the Warrants) continue to be or are listed and posted for trading on the CSE (or such other Canadian stock exchange acceptable to the Corporation), provided that this clause shall not be construed as limiting or restricting the Corporation from completing a consolidation, amalgamation, arrangement, takeover bid or merger that would result in the Subordinate Voting Shares ceasing to be listed and posted for trading on the CSE (or such other Canadian stock exchange acceptable to the

Corporation), so long as the holders of Subordinate Voting Shares receive securities of an entity which is listed on a stock exchange in Canada, or cash, or the holders of the Subordinate Voting Shares have approved the transaction in accordance with the requirements of applicable corporate and securities laws and the policies of the CSE (or such other Canadian stock exchange acceptable to the Corporation);

- (d) it will use its commercially reasonable efforts to ensure that all Subordinate Voting Shares outstanding or issuable from time to time (including without limitation the Subordinate Voting Shares issuable on the exercise of the Warrants) continue to be or are listed and posted for trading on the CSE (or on another Canadian or United States stock exchange) for a period of not less than 24 months from the date hereof;
- (e) it will use commercially reasonable efforts to maintain its status as a reporting issuer (or analogous entity) not in default of the requirements of the securities laws of the provinces of British Columbia, Alberta and Ontario for a period of not less than 24 months from the date hereof as and it will make all requisite filings under the Securities Laws to report the exercise of the right to acquire Subordinate Voting Shares pursuant to the Warrants; and
- (f) it will promptly notify the Warrant Agent and the Holders in writing of any default under the terms of this Indenture which remains unrectified for more than five days following its occurrence.

## **6.2 NO AMENDMENT TO SUBORDINATE VOTING SHARES**

So long as any Warrants are outstanding, the Corporation shall not amend the attributes of the Subordinate Voting Shares unless consented to by the Holders by Extraordinary Resolution.

## **6.3 TO PAY WARRANT AGENT REMUNERATION AND EXPENSES**

The Corporation covenants that it shall pay to the Warrant Agent from time to time reasonable remuneration for its services hereunder and shall pay or reimburse the Warrant Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Warrant Agent in the administration or execution of its duties hereunder (including the reasonable compensation and the 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 Warrant Agent hereunder shall be finally and fully performed, except any such expenses, disbursement or advance as may arise out of or result from the Warrant Agent's gross negligence, wilful misconduct or bad faith. The Warrant Agent shall not have any recourse against the securities or any other property held by it pursuant to this Indenture for payment of its fees.

## **6.4 TO PERFORM COVENANTS**

The Corporation shall duly and punctually perform and carry out all of the acts or things to be done by it as provided in this Indenture and that it shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all other acts, deeds and assurances in law as the Warrant Agent may reasonably require for the better accomplishing and effecting the intentions and provisions of this Indenture.

## **6.5 WARRANT AGENT MAY PERFORM COVENANTS**

If the Corporation shall fail to perform any of its covenants contained in this Indenture, the Warrant Agent may notify the Holders 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 perform said covenants or to notify the Holders of such performance by it. All sums expended or advanced by the Warrant Agent in so doing shall be repayable as provided in Section 6.3. No such performance, expenditure or advance by the Warrant Agent shall relieve the Corporation of any default hereunder or of its continuing obligations under the covenants herein contained.

## **6.6 CERTIFICATES OF NO DEFAULT**

At any time if requested by the Warrant Agent, the Corporation shall deliver to the Warrant Agent an Officers' Certificate stating that the Corporation has complied with all covenants, conditions or other requirements contained in this Indenture. In the event that the Corporation has not complied with all the covenants and conditions contained herein, it will advise the Warrant Agent and the Holders of such default as soon as reasonably practicable, specifying the covenant, condition or other requirement which has not been complied with and giving particulars of such non-compliance (the "**Default Notice**").

## **6.7 SOLICITATION OF WARRANT EXERCISE**

The Corporation agrees not to pay any commission or other remuneration directly or indirectly for soliciting the exercise of Warrants.

## **6.8 SECURITIES QUALIFICATION REQUIREMENTS**

- (a) If, in the opinion of counsel to the Warrant Agent, any instrument (not including a prospectus) is required to be filed with, or any permission is required to be obtained from the Securities Commissions or the CSE (or any other stock exchange upon which the Subordinate Voting Shares are listed) or any other step is required under Securities Laws before any Subordinate Voting Shares which a Holder is entitled to acquire pursuant to the exercise or deemed exercise of any Warrant may properly and legally be issued upon due exercise or deemed exercise thereof and thereafter traded, without further formality or restriction, the Corporation covenants that it will take such required action.
- (b) The Corporation or, if required by the Corporation, the Warrant Agent will give notice of the issue of Subordinate Voting Shares pursuant to the exercise or deemed exercise of Warrants, in such detail as may be required, to the Securities Commissions and the CSE or any other stock exchange upon which the Subordinate Voting Shares are listed.

## **ARTICLE 7** **ENFORCEMENT**

### **7.1 SUITS BY HOLDERS OF WARRANTS**

Subject to section 9.11, all or any of the rights conferred upon any Holder by any of the terms of the Warrant Certificates or this Indenture may be enforced by the Holder by appropriate legal proceedings but without prejudice to the right which is hereby conferred upon the Warrant Agent to proceed in its own name to enforce each and all of the provisions herein contained for the benefit of the Holders.

### **7.2 WAIVER OF DEFAULT**

Upon the happening of any default hereunder:

- (a) the Holders of not less than 66 2/3% of the Warrants then outstanding shall have the power (in addition to the powers exercisable by Extraordinary Resolution) by requisition in writing to instruct the Warrant Agent to waive any default hereunder and the Warrant Agent shall thereupon waive the default upon such terms and conditions as shall be prescribed in such requisition; or
- (b) the Warrant Agent shall have the power to waive any default hereunder upon such terms and conditions as the Warrant Agent may deem advisable, if, in the Warrant Agent 's opinion, the same shall have been cured or adequate provision made therefor; provided that no delay or omission of the Warrant Agent or of the Holders, as applicable, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein and provided further that no act or omission either of the Warrant Agent or the Holders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default hereunder or the rights resulting therefrom.

**ARTICLE 8**  
**SUPPLEMENTAL INDENTURES AND SUCCESSOR CORPORATIONS**

**8.1 PROVISION FOR SUPPLEMENTAL INDENTURES FOR CERTAIN PURPOSES**

From time to time the Corporation (if properly authorized by its directors) and the Warrant Agent may, subject to the provisions hereof, and they shall, when so directed hereby, execute and deliver by their proper officers, indentures or instruments supplemental hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) providing for the issuance of additional Warrants hereunder (including any Warrants in excess of the amount set out in Section 2.1) and any consequential amendments hereto as may be required by the Warrant Agent;
- (b) setting forth adjustments in the application of Article 4 hereof;
- (c) adding to the provisions hereof such additional covenants and enforcement provisions as, in the opinion of counsel are necessary or advisable, provided that the same are not in the opinion of the Warrant Agent, relying on the advice of counsel, prejudicial to the interests of the Holders as a group;
- (d) giving effect to any extraordinary resolution passed as provided in Article 9;
- (e) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder provided that such provisions are not, in the opinion of the Warrant Agent, relying on the advice of counsel, prejudicial to the interests of the Holders as a group;
- (f) adding to or amending the provisions hereof in respect of the transfer of Warrants, making provision for the exchange of Warrants and making any modification in the form of the Warrant Certificate which does not affect the substance thereof;
- (g) amending any of the provisions of this Indenture or relieving the Company from any of the obligations, conditions or restrictions herein contained, provided that no such amendment

or relief shall be or become operative or effective if, in the opinion of the Warrant Agent, relying on the advice of counsel, such amendment or relief impairs any of the rights of the Holders as a group or of the Warrant Agent, and provided further that the Warrant Agent may in its sole discretion decline to enter into any supplemental indenture which in its opinion may not afford adequate protection to the Warrant Agent when the same shall become operative; and

- (h) for any other purpose not inconsistent with the terms of this Indenture, including the correction or rectification of any ambiguities, defective or inconsistent provisions, errors or omissions herein, provided that, in the opinion of the Warrant Agent, relying on the advice of counsel, the rights of the Warrant Agent and the Holders as a group are in no way prejudiced thereby.

## **8.2 CERTAIN REQUIREMENTS**

Prior to the exercise of the Warrants, the Corporation shall not, directly or indirectly, sell, transfer or otherwise dispose of all or substantially all of its property and assets as an entirety to any other corporation and shall not amalgamate (except with a wholly-owned Subsidiary) or merge with or into any other corporation (any such other corporation being herein referred to as a "**Successor Corporation**") unless:

- (a) the Successor Corporation executes, before or contemporaneously with the consummation of any such transaction, an indenture supplemental hereto together with such other instruments as are satisfactory to the Warrant Agent and in the opinion of its counsel are necessary or advisable to evidence the assumption by the Successor Corporation of the due and punctual observance and performance of all the covenants and obligations of the Corporation under this Indenture; and
- (b) such transaction shall be to the satisfaction of the Warrant Agent, acting reasonably, and in the opinion of its counsel, be upon such terms so as to substantially preserve and not impair in any material respect the rights and powers of the Warrant Agent or of the Holders hereunder.

## **8.3 VESTING OF POWERS IN SUCCESSOR**

Whenever the conditions of section 8.2 have been duly observed and performed, the Successor Corporation shall possess and from time to time may exercise each and every right and power of the Corporation under this Indenture in the name of the Corporation or otherwise and any act or proceeding by any provision of this Indenture required to be done or performed by any Directors or officers of the Corporation may be done and performed with like force and effect by the Directors or officers of such Successor Corporation.

# **ARTICLE 9**

## **MEETINGS OF HOLDERS OF WARRANTS**

### **9.1 RIGHT TO CONVENE MEETING**

The Warrant Agent may at any time and from time to time and shall on receipt of a written request of the Corporation or a Holders' Request and upon being indemnified and funded to its reasonable satisfaction by the Corporation or by the Holders 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 Holders. In the event of the Warrant Agent failing, within seven (7) days after receipt of any such request and such indemnity and funding, to give notice convening a meeting, the Corporation or such Holders, 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 Warrant Agent.

## **9.2 NOTICE OF MEETINGS**

At least 21 days' notice of any meeting of the Holders shall be given to the Holders in the manner provided in Article 10 and a copy thereof must be sent to the Warrant Agent unless the meeting has been called by it and to the Corporation unless the meeting has been called by it. Such notice must state the time when and the place where the meeting is to be held and 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.

## **9.3 CHAIRMAN**

An individual (who need not be a Holder) designated in writing by the Warrant Agent, shall be the chairman of the meeting and if no individual is so designated, or if the individual so designated is not present within 15 minutes from the time fixed for the holding of the meeting, the Holders present in person or by proxy shall choose an individual present to be chairman.

## **9.4 QUORUM**

Subject to section 9.12, at any meeting of the Holders a quorum shall consist of Holders present in person or by proxy and entitled to acquire at least 40% of the aggregate number of all of the then outstanding Warrants, provided that at least two Persons entitled to vote thereat are personally present or represented by proxy. If a quorum is not present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Holders or pursuant to a Holders' Request, 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) at the same time and place and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting the Holders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not be entitled to acquire at least 40% of all of the then outstanding Warrants.

## **9.5 POWER TO ADJOURN**

The chairman of any meeting at which a quorum is present may with the consent of the meeting adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

## **9.6 SHOW OF HANDS**

Every question submitted to a meeting shall 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.

## **9.7 POLL**

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded by the chairman or by one or more Holders and/or proxies for Holders, a poll must be taken in such manner



and either at once or after an adjournment, as the chairman directs. Questions other than Extraordinary Resolutions shall, if a poll is taken, be decided by a majority of the votes cast on the poll.

## **9.8 VOTING**

On a show of hands, every Person who is present and entitled to vote, whether as a Holder or as proxy for one or more Holders or both, shall have one vote. On a poll, each Holder 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 Subordinate Voting Share to which that Person is entitled to acquire pursuant to the Warrant or Warrants held or represented by that Person. A proxy need not be a Holder. In the case of joint Holders of a Warrant, 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 is present in person or by proxy, they must vote together in respect of the Warrants of which they are joint Holders. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of any Warrants held or represented by him, but shall not have a second or deciding vote.

## **9.9 REGULATIONS**

- (a) The Warrant Agent or the Corporation with the approval of the Warrant Agent, may from time to time make or vary or restate such regulations as it shall from time to time think fit regarding the following:
  - (i) providing for and governing the voting by proxy by Holders and the form of instrument appointing proxies and the manner in which the same shall be executed, and for the production of the authority of any Person signing on behalf of the giver of such proxy;
  - (ii) for the deposit of instruments appointing proxies at such place as the Warrant Agent, the Corporation or the Holders convening the meeting, as the case may be, may, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same must be deposited;
  - (iii) for the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, telecopied or sent by facsimile before the meeting to the Corporation or to the Warrant Agent at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting; and
  - (iv) generally, the calling of meetings of Holders and the conduct of business thereat.
- (b) Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Except as such regulations may provide, the only Persons who shall be recognized at any meeting as Holders, or as entitled to vote or be present at the meeting in respect thereof (subject to section 9.10), shall be Holders and Persons whom Holders have by instrument in writing duly appointed as their proxies.

## **9.10 CORPORATION AND WARRANT AGENT MAY BE REPRESENTED**

The Corporation and the Warrant Agent, by their respective officers or directors, and the legal advisers of the Corporation and the Warrant Agent, may attend any meeting of the Holders, and shall be recognized and given reasonable opportunity to speak to any resolutions proposed for consideration by the meeting, but shall not be entitled to vote thereat, whether in respect of any Warrants held by them or otherwise.

## **9.11 POWERS EXERCISABLE BY EXTRAORDINARY RESOLUTION**

Subject to applicable law and the rules and regulations of any stock exchange having jurisdiction, in addition to the powers conferred upon them by any other provisions of this Indenture or by law, the Holders at a meeting shall have the power, exercisable from time to time by Extraordinary Resolution:

- (a) to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Holders and/or the Warrant Agent against the Corporation, or against its property, whether such rights arise under this Indenture or the Warrant Certificates or otherwise;
- (b) to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture or any ancillary or supplemental instrument which must be agreed to by the Corporation and to authorize the Warrant Agent to concur in and execute any indenture supplemental hereto embodying any such modification, change, addition or omission;
- (c) to sanction any scheme for the reconstruction or reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with any other corporation or for the sale, leasing, transfer or other disposition 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 section 8.2 has been complied with;
- (d) to direct or authorize the Warrant Agent 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;
- (e) with the consent of the Corporation, to remove the Warrant Agent or its successor in office and to appoint a new warrant agent or warrant agents to take the place of the Warrant Agent so removed;
- (f) 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;
- (g) to waive and direct the Warrant Agent to waive any default of the Corporation hereunder either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (h) to restrain any Holder from taking or instituting any suit, action or proceeding for the purpose of enforcing any of the covenants of the Corporation contained in this Indenture or the Warrant Certificates, or for the execution of any power hereunder;

- (i) to direct any Holder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment of the costs, charges and expenses reasonably and properly incurred by such Holder in connection therewith; and
- (j) to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Holders.

## **9.12 MEANING OF "EXTRAORDINARY RESOLUTION"**

- (a) The expression "**Extraordinary Resolution**" when used in this Indenture means, subject as provided in this Article, a resolution proposed to be passed at a meeting of Holders duly convened and held in accordance with the provisions of this Article at which there are Holders present in person or by proxy who hold at least 40% of the aggregate number of then outstanding Warrants and passed by the affirmative votes of the Holders holding at least 66 2/3% of the aggregate number of all of the then outstanding Warrants represented at the meeting and voted on a poll upon such resolution.
- (b) If, at any such meeting, Holders holding at least 40% of the then outstanding Warrants 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 the Holders, 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 seven days' prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Article 10. Such notice must state that at the adjourned meeting the Holders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Holders present in person or by proxy 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 by the requisite vote as provided in subsection 9.12(a) shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that Holders entitled to acquire at least 40% of the Subordinate Voting Shares which may be acquired pursuant to the exercise of all of the then outstanding Warrants are not present in person or by proxy at such adjourned meeting.
- (c) 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.

## **9.13 POWERS CUMULATIVE**

It is hereby declared and agreed that any one or more of the powers and/or any combination of the powers in this Indenture stated to be exercisable by the Holders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the rights of the Holders to exercise the same or any other such power or combination of powers thereafter from time to time.

## **9.14 MINUTES**

Minutes of all resolutions and proceedings at every meeting of Holders shall be made and duly entered in books to be from time to time provided for that purpose by the Warrant Agent at the expense of the Corporation, and any such minutes as aforesaid, if signed by the chairman or secretary of the meeting at

which such resolutions were passed or proceedings had, or by the chairman or secretary of the next succeeding meeting (if any) of the Holders, 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.

### **9.15 INSTRUMENTS IN WRITING**

All actions which may be taken and all powers which may be exercised by the Holders at a meeting held as hereinbefore provided in this Article provided may also be taken and exercised by Holders holding at least 66 2/3% of all of the then outstanding Warrants 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.

### **9.16 BINDING EFFECT OF RESOLUTIONS**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article at a meeting of Holders shall be binding upon all Holders, whether present at or absent from such meeting, and every instrument in writing signed by Holders in accordance with section 9.15 shall be binding upon all the Holders of Warrants, whether signatories thereto or not, and each and every Holder shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

## **ARTICLE 10** **NOTICES**

### **10.1 NOTICE TO THE CORPORATION AND THE WARRANT AGENT**

- (a) Unless herein otherwise expressly provided, any notice to be given hereunder to the Corporation or the Warrant Agent shall be deemed to be validly given if delivered or if sent by registered letter, postage prepaid, or by email transmission:

if to the Corporation:

XS Financial Inc.  
1901 Avenue of the Stars  
Suite 120  
Los Angeles, California  
90067

Attention: Chief Executive Officer  
Email: dkivitz@xsfinancial.com

with a copy to:

Fogler Rubinoff LLP  
77 King Street West, Suite 3000  
Toronto, Ontario  
M5K 1G8

Attention: Jennifer Campbell  
Email: [jcampbell@foglers.com](mailto:jcampbell@foglers.com)

if to the Warrant Agent:

Odyssey Trust Company  
1230, 300 5<sup>th</sup> Avenue SW  
Calgary AB T2P 3C4

Attention: VP, Corporate Trust  
Email: [corptrust@odysseytrust.com](mailto:corptrust@odysseytrust.com)

and any such notice delivered in accordance with the foregoing shall be deemed to have been received on the date of delivery or if sent by facsimile transmission, on the first Business Day following such transmission or, if mailed, on the fifth Business Day following the date of the postmark on such notice.

- (b) The Corporation or the Warrant Agent, as the case may be, may from time to time notify the others in the manner provided in subsection 10.1(a) of a change of address which, from the effective date of such notice and until changed by like notice, shall be the address of the Corporation or the Warrant Agent, as the case may be, for all purposes of this Indenture.

## **10.2 NOTICE TO HOLDERS OF WARRANTS**

Except as herein otherwise expressly provided and subject to section 10.3, any notice required or permitted to be given to Holders under the provisions of this Indenture shall be deemed to be validly given if personally delivered or if sent by ordinary post to the Holders at their addresses appearing in one of the registers hereinbefore mentioned. Any notice so sent shall be deemed to have been received on the next Business Day after the date of delivery to such address or, if mailed, on the fifth Business Day following the date on which it was mailed. In the event that Warrants are held in the name of the Depository, a copy of such notice shall also be sent by electronic communication to the Depository and shall be deemed received and given on the day it is so sent. Accidental error or omission in giving notice or accidental failure to give notice to Holders shall not invalidate any action or proceeding founded thereon. In determining under any provision hereof the date when notice of any meeting or other event must be given, the date of giving notice shall be included and the date of the meeting or other event shall be excluded.

## **10.3 MAIL SERVICE INFORMATION**

- (a) If by reason of any interruption of mail service, actual or threatened, any notice to be given to the Holders, the Warrant Agent or the Corporation would be unlikely to reach its destination in the ordinary course of mail, such notice shall be valid and effective only if the notice is:
  - (i) in the case of the Warrant Agent or the Corporation, delivered to an officer of the party to which it is addressed or if sent to such party, at the appropriate address in accordance with section 10.1 by facsimile or other means of prepaid transmitted or recorded communication; and
  - (ii) in the case of Holders, published once (i) in the national edition of The Globe & Mail; and (ii) in such other place or places and manner, if any, as the Warrant Agent may require.

- (b) Any notice given to the Holders by publication shall be deemed to have been given on the last day on which publication shall have been effected as required pursuant to subsection 10.3(a).

## **ARTICLE 11**

### **CONCERNING THE WARRANT AGENT**

#### **11.1 WARRANT INDENTURE LEGISLATION**

- (a) The expression "**Indenture Legislation**" means the provisions, if any, of any statute of Canada or any province thereof, and of any regulations under any such statute, relating to warrant indentures and to the rights, duties and obligations of warrant agents under warrant indentures and of corporations issuing their securities under warrant indentures, to the extent that such provisions may at the time be in force and applicable to this Indenture or the Corporation.
- (b) The Corporation and the Warrant Agent agree that each shall at all times in relation to this Indenture and in relation to any action to be taken hereunder observe and comply with and be entitled to the benefits of Indenture Legislation.
- (c) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with any mandatory requirement of Indenture Legislation, such mandatory requirement shall prevail.

#### **11.2 NO CONFLICT OF INTEREST**

The Warrant Agent represents to the Corporation that at the date of the execution and delivery of this Indenture there exists no material conflict of interest in its duties and obligations as a warrant agent hereunder. In the event of a material conflict of interest arising in the Warrant Agent's role as warrant agent hereunder the Warrant Agent shall, as soon as practicable but in any case within 20 days after ascertaining that it has such material conflict of interest, either eliminate the same or assign its duties and obligations hereunder to a successor Warrant Agent approved by the Corporation. Notwithstanding the foregoing provisions of this section, if any such material conflict of interest exists or hereafter shall exist, the validity and enforceability of this Indenture and the Warrant Certificate(s) shall not be affected in any manner whatsoever by reason hereof.

#### **11.3 REPLACEMENT OF WARRANT AGENT**

- (a) The Warrant Agent may resign and be discharged from all duties and liabilities hereunder by giving to the Corporation at least 45 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. The Holders by Extraordinary Resolution shall have the power at any time to remove the existing Warrant Agent and to appoint a new Warrant Agent. If the Warrant Agent resigns or is removed by Extraordinary Resolution or is dissolved, becomes bankrupt, goes into liquidation or otherwise becomes incapable of acting hereunder, the Corporation shall forthwith appoint a new Warrant Agent unless a new Warrant Agent has already been appointed by the Holders; failing such appointment by the Corporation, the retiring Warrant Agent or any Holder may apply to a judge of a court having jurisdiction, on such notice as such judge may direct, for the appointment of a new Warrant Agent; but any new Warrant Agent so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Holders. Any new Warrant Agent appointed under any provision of this section must be a corporation authorized to carry on

the business of a transfer agent in the Province of Ontario and, if required by the applicable warrant indenture legislation of any other province, in that other province, and must be a corporation which is independent of the Corporation and has no material conflict of interest. On any new appointment the new Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Warrant Agent without any further assurances conveyance, act or deed. If, for any reason, it becomes necessary or expedient to execute any further deed or assurance, the former Warrant Agent shall, at the expense of the Corporation, execute the same in favour of the new warrant agent.

- (b) Any corporation into which the Warrant Agent may be merged or with which it may be consolidated or amalgamated or any corporation resulting from any merger, consolidation or amalgamation to which the Warrant Agent shall be a party or any corporation succeeding to the transfer agency business of the Warrant Agent, shall be the successor Warrant Agent under this Indenture without the execution of any instrument or any further act.
- (c) Upon the appointment of a new Warrant Agent, the Corporation shall promptly notify the Holders thereof in the manner prescribed by section 10.2 hereof.

#### **11.4 EVIDENCE, EXPERTS AND ADVISERS**

- (a) In addition to the reports, certificates, opinions and other evidence required by this Indenture, the Corporation shall furnish to the Warrant Agent such additional evidence of compliance with any provision hereof, and in such form, as may be prescribed by Indenture Legislation or as the Warrant Agent may reasonably require by written notice to the Corporation.
- (b) In the exercise of its rights and duties hereunder, the Warrant Agent may, if it is acting in good faith, rely as to the truth of the statements and the accuracy of the opinions expressed in statutory declarations, opinions, reports, written requests, consents, or orders of the Corporation, certificates of the Corporation or other evidence furnished to the Warrant Agent pursuant to any provision hereof or any Indenture Legislation or pursuant to a request of the Warrant Agent, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and acceptability of any information therein contained which the Warrant Agent in good faith believes to be genuine.
- (c) Proof of the execution of an instrument in writing, including a Holders' Request, by any Holder may be made by the certificate of a notary public, or other officer with similar powers, that the person signing such instrument acknowledged to it the execution thereof, or by an affidavit of a witness to such execution or in any other manner which the Warrant Agent may consider adequate.
- (d) The Warrant Agent may, at the expense of the Corporation, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and may pay reasonable remuneration for all services so performed by any of them, without taxation of costs of any counsel, and shall not be responsible for any misconduct or negligence on the part of any such experts or advisers who have been appointed with reasonable care by the Warrant Agent.

## **11.5 WARRANT AGENT MAY DEAL IN SECURITIES**

Subject to section 11.2, the Warrant Agent may buy, sell, lend upon and deal in securities of the Corporation and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

## **11.6 WARRANT AGENT NOT ORDINARILY BOUND**

Except as otherwise specifically provided herein, the Warrant Agent shall not, subject to the provisions of Indenture Legislation, 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 of the covenants on the part of the Corporation herein contained.

## **11.7 WARRANT AGENT NOT REQUIRED TO GIVE SECURITY**

The Warrant Agent shall not be required to give any bond or security in respect of the execution or administration of its duties under this Indenture or otherwise in respect of the premises.

## **11.8 WARRANT AGENT NOT REQUIRED TO GIVE NOTICE OF DEFAULT**

The Warrant Agent shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof; nor shall the Warrant Agent 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 Warrant Agent and in the absence of any such notice the Warrant Agent 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, warranties, covenants, agreements or conditions contained herein. Any such notice shall in no way limit any discretion herein given to the Warrant Agent to determine whether or not the Warrant Agent shall take action with respect to any default.

## **11.9 ACCEPTANCE OF APPOINTMENT**

The Warrant Agent hereby accepts its appointment as warrant agent under this Indenture and agrees to perform its duties hereunder upon the terms and conditions herein set forth or referred to unless and until discharged therefrom by resignation or in some other lawful way.

## **11.10 DUTIES OF WARRANT AGENT**

The Warrant Agent, in exercising its powers and discharging its duties hereunder, shall:

- (a) act honestly and in good faith; and
- (b) exercise the care, diligence and skill that a reasonably prudent warrant agent would exercise in comparable circumstances.

## **11.11 ACTIONS BY WARRANT AGENT**

- (a) The Warrant Agent shall have the power to institute and to maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Holders.



- (b) Subject only to section 11.8, the obligation of the Warrant Agent to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Warrant Agent or the Holders hereunder shall be conditional upon the Holders delivering to the Warrant Agent:
  - (i) a Holder's Request or Extraordinary Resolution directing the Warrant Agent to take such act, action, or proceeding;
  - (ii) sufficient funds to commence or continue such act, action or proceeding; and
  - (iii) an indemnity reasonably satisfactory to the Warrant Agent to protect and hold harmless the Warrant Agent against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damages it may suffer by reason thereof.
- (c) None of the provisions contained in this Indenture shall require the Warrant Agent 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.
- (d) The Warrant Agent may, before commencing or at any time during the continuance of any such act, action or proceeding, require the Holders, at whose instance it is acting, to deposit with the Warrant Agent the Warrants held by them, for which Warrants the Warrant Agent shall issue receipts.

#### **11.12 PROTECTION OF WARRANT AGENT**

By way of supplement to the provisions of any law for the time being relating to Warrant Agents it is expressly declared and agreed as follows:

- (a) the Warrant Agent shall not be liable for or by reason of any statements of fact or recitals in this Indenture or in the Warrant Certificates (except the representation contained in section 11.2) or be required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (b) nothing herein contained shall impose any obligation on the Warrant Agent 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; and
- (c) the Warrant Agent shall not be bound to give notice to any person or persons of the execution hereof.

#### **11.13 INDEMNIFICATION OF THE WARRANT AGENT**

The Warrant Agent shall at all times be indemnified and saved harmless by the Corporation from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever arising in connection with this Indenture, including, without limitation, those arising out of or related to actions taken or omitted to be taken by the Warrant Agent contemplated hereby, legal fees and disbursements on a solicitor and client basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Warrant Agent may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as

Warrant Agent. The foregoing provisions of this section do not apply to the extent that in any circumstances there has been acts of gross negligence or wilful misconduct by the Warrant Agent. This indemnity shall survive the termination or discharge of this Indenture and the resignation or removal of the Warrant Agent.

#### **11.14 THIRD PARTY INTERESTS**

Each party to this Indenture hereby represents to the Warrant Agent that any account to be opened by, or interest to held by the Warrant Agent in connection with this Indenture, for or to the credit of such 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 party hereto agrees to complete and execute forthwith a declaration in the Warrant Agent's prescribed form as to the particulars of such third party.

#### **11.15 NOT BOUND TO ACT**

The Warrant Agent 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 Warrant Agent, in its sole judgement, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Warrant Agent, in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in noncompliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice to the Corporation, provided (i) that the Warrant Agent's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Warrant Agent's satisfaction within such ten (10) day period, then such resignation shall not be effective.

#### **11.16 PRIVACY LAWS**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Corporation shall, prior to transferring or causing to be transferred personal information to the Warrant Agent, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Warrant Agent shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws.

### **ARTICLE 12** **GENERAL PROVISIONS**

#### **12.1 SEVERABILITY**

If any provision or part thereof of this Indenture is declared by a court or other judicial or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part thereof shall be

severed from this Indenture and the remaining provisions of part thereof of this Indenture shall continue in full force and effect and unaffected thereby.

## **12.2 ASSIGNABILITY**

Except as permitted herein, this Indenture shall not be assignable.

## **12.3 EXECUTION**

This Indenture may be simultaneously executed in several counterparts, and may be executed by facsimile or other means of electronic communication producing a printed copy, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution they shall be deemed to be dated as of the date hereof.

## **12.4 SATISFACTION AND DISCHARGE OF INDENTURE**

Upon the earlier of:

- (a) the date by which there shall have been delivered to the Warrant Agent for exercise or cancellation all Warrants theretofore Authenticated hereunder, in the case of Certificated Warrants (or such other instructions, in a form satisfactory to the Warrant Agent) or, in the case of Uncertificated Warrants, by way of standard processing through the book entry only system in the case of a CDS Global Warrant; and
- (b) the Expiry Time;

and if all certificates representing Subordinate Voting Shares, if any, required to be issued in compliance with the provisions hereof have been issued and delivered hereunder or to the Warrant Agent in accordance with such provisions, this Indenture shall cease to be of any force and effect and the Warrant Agent, on demand of and at the cost and expense of the Corporation and upon delivery to the Warrant Agent of a certificate of the Corporation stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture. Notwithstanding the foregoing, the indemnities provided to the Warrant Agent by the Corporation hereunder shall remain in full force and effect and survive the termination of this Indenture.

## **12.5 PROVISIONS OF INDENTURE AND WARRANTS FOR THE SOLE BENEFIT OF PARTIES AND HOLDERS**

Nothing in this Indenture or in the Warrant Certificates, expressed or implied, shall give or be construed to give to any person other than the parties thereto and the Holders, as the case may be, any legal or equitable right, remedy or claim under this Indenture, or under any covenant or provision herein or therein contained, all such covenants and provisions being for the sole benefit of the parties hereto and the Holders.

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

**IN WITNESS WHEREOF** the parties hereto have executed these presents under their respective corporate seals and the hands of their proper officers in that behalf.

**XS FINANCIAL INC.**

*“David Kivitz”*

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

Name: David Kivitz

Title: Chief Executive Officer

*I have authority to bind the Corporation*

**ODYSSEY TRUST COMPANY**

Per: *“Dan Sander”*

\_\_\_\_\_  
Name: Dan Sander

Title: VP Corporate Trust

*I have authority to bind the Corporation*

*“Amy Douglas”*

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

Name: Amy Douglas

Title: Director Corporate Trust

*I have authority to bind the Corporation*

**SCHEDULE "A"**

to the Warrant Indenture between XS Financial Inc. and Odyssey Trust Company  
dated as of March 3, 2021

**FORM OF WARRANT CERTIFICATE**

[See attached]

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE *[INSERT DATE THAT IS 4 MONTHS AND A DAY AFTER DISTRIBUTION DATE]*.

**(INSERT IF BEING ISSUED TO CDS)** UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO XS FINANCIAL 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 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.

**(INSERT IF BEING ISSUED TO A U.S. WARRANTHOLDER)**

THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**U.S. SECURITIES ACT**") OR UNDER ANY STATE SECURITIES LAWS, AND THE SECURITIES REPRESENTED HEREBY MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, ONLY (A) TO XS FINANCIAL INC. (THE "**CORPORATION**"), (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY (i) RULE 144, IF AVAILABLE, OR (ii) 144A UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE U.S. STATE SECURITIES LAWS, (D) IN COMPLIANCE WITH ANOTHER EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (E) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT PROVIDED THAT IN THE CASE OF TRANSFERS PURSUANT TO (C)(i) OR (D) ABOVE, A LEGAL OPINION IN FORM AND SUBSTANCE OR SUCH OTHER EVIDENCE REASONABLY SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED TO ODYSSEY TRUST COMPANY TO THE EFFECT THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

THIS WARRANT AND THE SECURITIES DELIVERABLE UPON EXERCISE HEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**U.S. SECURITIES ACT**"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THIS WARRANT MAY NOT BE EXERCISED IN THE UNITED STATES OR BY OR ON BEHALF OF, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON UNLESS THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT AND THE APPLICABLE SECURITIES LEGISLATION OF ANY SUCH STATE OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS IS AVAILABLE. "**UNITED STATES**" AND "**U.S. PERSON**" ARE AS DEFINED BY REGULATION S UNDER THE U.S. SECURITIES ACT.

**WARRANT CERTIFICATE  
XS FINANCIAL INC.**

(Incorporated under the laws of British Columbia)

No. ►



WARRANTS entitling the Holder to acquire, subject to adjustment, one Subordinate Voting Share of XS Financial Inc. for each Warrant represented hereby.

**THIS CERTIFICATE IS TO CERTIFY** that for value received ► (herein referred to as the "**Holder**") is the registered holder of the number of Warrants of XS Financial Inc. (the "**Corporation**") stated above, and subject to adjustment and penalty provisions as set forth in the Warrant Indenture, is entitled to acquire, at any time after the date hereof and up until 5:00 p.m. (Toronto time) on March 3, 2023 (the "**Expiry Date**"), upon payment of \$0.45 per Subordinate Voting Share (the "**Exercise Price**"), for each Warrant represented hereby, one subordinate voting share of the Corporation ("**Subordinate Voting Share**"), all in the manner and subject to the restrictions and adjustments set forth in the Warrant Indenture (as hereinafter defined).

Any capitalized term in this Certificate that is not otherwise defined herein, shall have the meaning ascribed thereto in the Warrant Indenture.

The Warrants represented by this Certificate are issued or issuable in fully registrable form only under the provisions of an indenture (which indenture together with all other instruments ancillary thereto is referred to herein as the "**Warrant Indenture**") dated as of March 3, 2021 among the Corporation and Odyssey Trust Company (the "**Warrant Agent**"). Reference is hereby made to the Warrant Indenture for a full description of the rights of the holders of the Warrants, the Corporation and the Warrant Agent in respect thereof, and the terms and conditions upon which the Warrants evidenced hereby are issued and held, all to the same effect as if the provisions of the Warrant Indenture were herein set forth. By acceptance of this Certificate, the Holder assents to all provisions of the Warrant Indenture. To the extent that the terms and conditions set forth in this Certificate conflict with the terms and conditions of the Warrant Indenture, the Warrant Indenture shall prevail. The Corporation will furnish to the holder of this Certificate, upon request and without charge, a copy of the Warrant Indenture.

**In the event that prior to the Expiry Date, the Holder has not exercised the Warrants represented hereby in accordance with the terms of the Warrant Indenture, then any Warrants represented by this Certificate which have not been so exercised shall be deemed to have expired and shall be of no further force and effect as of 5:00 p.m. (Toronto time) on the Expiry Date.**

Upon exercise, the Warrants so exercised shall be void and of no value or effect.

Certificates representing the Subordinate Voting Shares issued upon exercise of the Warrants (reflecting any adjustments as provided herein and in the Warrant Indenture) shall, within five (5) Business Days after the Exercise Date, be delivered by the Corporation to the address of the Holder thereof last appearing on the register of Holders maintained by the Warrant Agent.

The right to acquire Subordinate Voting Shares may only be exercised by the Holder within the time set forth above by:

- (a) duly completing and executing the Exercise Form attached hereto;
- (b) by providing a certified cheque, bank draft or money order in lawful money of Canada payable to the order of the Corporation for the aggregate purchase price of the Subordinate Voting Shares so subscribed; and
- (c) surrendering this Warrant Certificate to the Warrant Agent at the principal transfer office of the Warrant Agent in the City of Calgary, Alberta, all in accordance with Section 3.2 of the Warrant Indenture.

The Warrants represented by this Certificate shall be deemed to be surrendered only upon personal delivery hereof or, if sent by mail or other means of transmission, upon actual receipt thereof by the Warrant Agent at the offices referred to above.

Upon surrender of these Warrants, the person or persons in whose name or names the Subordinate Voting Shares issuable upon exercise of the Warrants are to be issued shall be deemed for all purposes (except as provided in the Warrant Indenture) to be the holder or holders of record of such Subordinate Voting Shares and the Corporation has covenanted that it will (subject to the provisions of the Warrant Indenture) cause a certificate or certificates representing the Subordinate Voting Shares to be delivered or mailed to the person or persons at the address or addresses specified in the Exercise Form within five (5) Business Days.

The Warrant Indenture provides for adjustments to certain rights of holders including the number of Subordinate Voting Shares issuable upon exercise of the Warrants upon subdivision, consolidation or reclassification of the Subordinate Voting Shares or any reclassification, capital reorganization, amalgamation or merger of the Corporation and certain distributions of securities, including rights, options or warrants to purchase Subordinate Voting Shares or securities convertible or exchangeable into Subordinate Voting Shares or assets of the Corporation. The Holder should refer to the Warrant Indenture which provides for adjustments in certain other events.

The terms and conditions relating to the Warrants and this Certificate may be modified, changed or added to in accordance with the provisions of the Warrant Indenture. The Warrant Indenture contains provisions making binding upon all Holders of Warrants outstanding thereunder resolutions passed at meetings of such Holders held in accordance with such provisions and instruments in writing signed by the Holders entitled to acquire a specified percentage of the Subordinate Voting Shares which may be acquired pursuant to the exercise of all of the then outstanding Warrants.

The holding of the Warrants evidenced by this Certificate shall not constitute, or be construed as conferring upon, a Holder any right or interest whatsoever as a shareholder of the Corporation except such rights as may be provided in the Warrant Indenture or in this Certificate.

The Holder of this Certificate may, upon compliance with the reasonable requirements of the Warrant Agent and upon surrender of this Certificate, exchange this Certificate for another Certificate or Certificates entitling the Holder thereof to receive, in the aggregate, the same number of Subordinate Voting Shares as are issuable under this Certificate.

The Warrants evidenced by this Certificate may only be transferred in accordance with applicable securities laws and upon due execution and delivery to the Warrant Agent of a Transfer Form in the form attached



hereto and in compliance with all the conditions prescribed in the Warrant Indenture and compliance with such other reasonable requirements as the Warrant Agent may prescribe.

Neither the Warrants nor the Subordinate Voting Shares issuable upon exercise thereof have been or will be registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**"), or under the securities or "blue sky" laws of any state of the United States. These Warrants may not be exercised in the United States or by or on behalf of, or for the account or benefit of, a U.S. person or a person in the United States, unless the Subordinate Voting Shares issuable upon exercise of the Warrants have been registered under the U.S. Securities Act and the applicable state securities or "blue sky" laws, or an exemption from such registration requirements is available. "**United States**" and "**U.S. person**" are as defined in Rule 902 of Regulation S under the U.S. Securities Act.

This Warrant Certificate shall not be valid for any purpose until it has been countersigned by or on behalf of the Warrant Agent under the Warrant Indenture.

The registered holder of this Warrant Certificate expressly acknowledges having requested, and consents to, the drawing in the English language only of this Warrant Certificate evidencing the Warrants registered in his name and all documents relating to such Warrants. Le détenteur inscrit du présent certificat de bons de souscription reconnaît expressément avoir demandé et consenti que le présent certificat attestant qu'il est le détenteur inscrit de bons de souscription, ainsi que tous les documents s'y rapportant, soient rédigés en anglais seulement.

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

Time shall be of the essence hereof.

**IN WITNESS WHEREOF** the Corporation has caused this Warrant Certificate to be signed as of the day of ►, 2021.

**XS FINANCIAL INC.**

By: \_\_\_\_\_

Name: ►

Title: ►

*I have authority to bind the Corporation*

This Warrant Certificate is one of the Warrant Certificates referred to in the Warrant Indenture.

**ODYSSEY TRUST COMPANY  
WARRANT AGENT, CALGARY, ALBERTA**

By: \_\_\_\_\_

Name: ►

Title: ►

*I have authority to bind the Corporation*

## EXERCISE FORM

**To: XS FINANCIAL INC.**

**And To: ODYSSEY TRUST COMPANY**

1. The undersigned hereby irrevocably subscribes for, and exercises his right to be issued, the number of Subordinate Voting Shares set forth below, such Subordinate Voting Shares being issuable upon exercise of such Warrants pursuant to the terms specified in the said Warrants and the Warrant Indenture.
  
2. The undersigned represents, warrants and certifies as follows (one (only) of the following must be checked):
  - (A) the undersigned holder at the time of exercise of the Warrants (i) is not in the United States, (ii) is not a U.S. Person, (iii) is not exercising the Warrants on behalf of, or for the account or benefit of, a U.S. Person or a person in the United States, (iv) did not acquire the Warrants in the United States or on behalf of, or for the account or benefit of, a U.S. Person or a person in the United States; (v) did not receive an offer to exercise the Warrants in the United States; (vi) did not execute or deliver this exercise form in the United States; and (vii) delivery of the Subordinate Voting Shares will not be to an address in the United States; OR
  
  - (B) the undersigned holder (i) is the original U.S. Purchaser of the Warrants as part of the Offering of Units of which the Warrants comprised a part; and (ii) confirms, as of the date hereof, each of the representations, warranties, certifications and agreements made by it in connection with its acquisition of such Units are true and correct as though such representations, warranties, certifications and agreements were made on the date hereof; OR
  
  - (C) the undersigned holder is (i)(a) in the United States, (b) a U.S. Person, (c) a person exercising for the account or benefit of a U.S. Person or a person in the United States, (d) executing or delivering this exercise form in the United States, or (e) requesting delivery of the Subordinate Voting Shares in the United States, and (ii) the undersigned holder has an exemption from the registration requirements of the U.S. Securities Act and all applicable state securities laws available for the exercise of the Warrants and the issuance of the Subordinate Voting Shares, and has delivered to the Corporation and the Warrant Agent a written opinion of U.S. counsel in form and substance reasonably satisfactory to the Corporation and the Warrant Agent or such other evidence reasonably satisfactory to the Corporation and the Warrant Agent to that effect.

It is understood that the Corporation and the Warrant Agent may require evidence to verify the foregoing representations.

- Notes: (1) Certificates representing Subordinate Voting Shares will not be registered or delivered to an address in the United States unless Box B or C above is checked.
- (2) If Box C above is checked, holders are encouraged to consult with the Corporation and the Warrant Agent in advance to determine that the legal opinion tendered in connection with

the exercise will be satisfactory in form and substance to the Corporation and the Warrant Agent.

"United States" and "U.S. Person" are as defined in Rule 902 of Regulation S under the U.S. Securities Act.

The undersigned hereby irrevocably directs that the Subordinate Voting Shares be issued and delivered as follows:

Name in full	Address (include Postal Code)	Number of Subordinate Voting Shares
--------------	-------------------------------	-------------------------------------

(Please print full name in which certificate(s) are to be issued.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature Guaranteed

Signature of Registered Holder

Name of Registered Holder

- Please check box if certificates representing these Subordinate Voting Shares are to be delivered at the office of the Warrant Agent where this Warrant Certificate is surrendered, failing which the certificates shall be mailed to the address set forth above.

**Instructions:**

The registered holder may exercise his right to receive Subordinate Voting Shares by completing this form and surrendering this form and the Warrant Certificate representing the Warrants being exercised, together with the applicable payment therefor, to Odyssey Trust Company, 1230 300 5<sup>th</sup> Ave. S.W. Calgary, AB T2P 3C4. Certificates for Subordinate Voting Shares shall be delivered or mailed within five (5) Business Days after the exercise of the Warrants.

If the Exercise Form indicates that Subordinate Voting Shares are to be issued to a person or persons other than the registered holder of the Certificate, the signature on this Exercise Form must be guaranteed by an authorized officer of a Canadian Schedule 1 chartered bank or eligible guarantor institution with membership in an approved signature guarantee medallion program.

If the Exercise Form is signed by a trustee, executor, administrator, curator, guardian, attorney, officer of a corporation or any person acting in a fiduciary or representative capacity, the certificate must be accompanied by evidence of authority to sign satisfactory to the Warrant Agent and the Corporation.

If Box B is checked, any opinion tendered must be in form and substance satisfactory to the Corporation. Holders planning to deliver an opinion of counsel in connection with the exercise of Warrants should contact the Corporation in advance to determine whether any opinions to be tendered will be acceptable to the Corporation.

**TRANSFER FORM**

**ANY TRANSFER OF WARRANTS WILL REQUIRE COMPLIANCE WITH APPLICABLE SECURITIES LEGISLATION. TRANSFERORS AND TRANSFEREES ARE URGED TO CONTACT LEGAL COUNSEL BEFORE EFFECTING ANY SUCH TRANSFER.**

**To: XS FINANCIAL INC.**

**And To: ODYSSEY TRUST COMPANY**

**FOR VALUE RECEIVED**, the undersigned hereby sells, transfers and assigns to

\_\_\_\_\_ Warrants represented by this Warrant Certificate and does hereby

\_\_\_\_\_ as its attorney with full power of substitution to transfer the said Warrants on the  
irrevocably appoint as its attorney with full power of substitution to transfer the said Warrants on the  
appropriate register of the Warrant Agent.

DATED \_\_\_\_\_ day of \_\_\_\_\_  
this \_\_\_\_\_

In the case of a warrant certificate that contains a U.S. restrictive legend, the undersigned hereby represents, warrants and certifies that (one (only) of the following must be checked):

- (A) the transfer is being made only to the Corporation;
- (B) the transfer is being made outside the United States in accordance with Rule 904 of Regulation S under the U.S. Securities Act, and in compliance with any applicable local laws and regulations and the holder has provided herewith the Declaration for Removal of Legend attached as Schedule "B" to the Warrant Indenture, or
- (C) the transfer is being made pursuant to Rule 144 under the U.S. Securities Act or in accordance with another transaction that does not require registration under the U.S. Securities Act or any applicable state securities laws and the undersigned has furnished to the Corporation and the Warrant Agent an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Corporation to such effect.

In the case of a warrant certificate that does not contain a U.S. restrictive legend, if the proposed transfer is to, or for the account or benefit of, a U.S. Person or a person in the United States, the undersigned hereby represents, warrants and certifies that the transfer of the Warrants is being completed pursuant to an exemption from the registration requirements of the U.S. Securities Act and any applicable state securities laws, in which case the undersigned has furnished to the Corporation and the Warrant Agent an opinion of

counsel of recognized standing in form and substance reasonably satisfactory to the Corporation to such effect.

If transfer is to a U.S. Person, check this box.

\_\_\_\_\_  
Signature Guaranteed

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

\_\_\_\_\_  
Name of Registered Holder

**(The following to be completed by the transferee)**

The undersigned acknowledges that it shall notify the Corporation prior to any exercise or deemed exercise of the Warrants if the representations, warranties and certifications contained in this Transfer Form are no longer true and correct.

\_\_\_\_\_  
Signature Guaranteed

\_\_\_\_\_  
Signature of Transferee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Transferee (Please Print)

**Instructions:**

Signature of the Holder must be the signature of the registered holder appearing on the face of this Warrant Certificate.

If this Transfer Form is signed by a trustee, executor, administrator, curator, guardian, attorney, officer of a corporation or any person acting in a fiduciary or representative capacity, the certificate must be accompanied by evidence of authority to sign satisfactory to the Warrant Agent and the Corporation, acting reasonably.

The signature on this Transfer Form must be guaranteed by an authorized officer of a Canadian Schedule 1 chartered bank or eligible guarantor institution with membership in an approved signature guarantee medallion program.

Warrants shall only be transferable in accordance with applicable laws and the applicable provisions of the Warrant Indenture. The transfer of Warrants may result in the Subordinate Voting Shares received upon the exercise of the Warrants not being freely tradable in the jurisdiction of the purchaser.

**SCHEDULE "B"**

to the Warrant Indenture between XS Financial Inc. and Odyssey Trust Company  
dated as of March 3, 2021

**FORM OF DECLARATION FOR REMOVAL OF LEGEND**

TO: Odyssey Trust Company, as registrar and transfer agent

AND TO: XS Financial Inc. (the "**Corporation**")

The undersigned (A) acknowledges that the sale of \_\_\_\_\_ subordinate voting shares of the Corporation represented by certificate number \_\_\_\_\_ to which this declaration relates is being made in reliance on Rule 904 of Regulation S ("**Regulation S**") under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**"), and (B) certifies that (1) the undersigned is not (a) an "affiliate" of the Corporation (as that term is defined in Rule 405 under the U.S. Securities Act), (b) a "distributor" as defined in Regulation S or (c) an affiliate of a distributor; (2) the offer of such securities was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States, or (b) the transaction was executed on or through the facilities of a designated offshore securities market (such as the TSX Venture Exchange or the Toronto Stock Exchange) and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States or a U.S. person; (3) neither the seller nor any affiliate of the seller nor any person acting on their behalf has engaged or will engage in any directed selling efforts in the United States in connection with the offer and sale of such securities; (4) the sale is bona fide and not for the purpose of "washing off" the resale restrictions imposed because the securities are "restricted securities" (as that term is defined in Rule 144(a)(3) under the U.S. Securities Act); (5) the seller does not intend to replace securities sold in reliance on Rule 904 of Regulation S with fungible unrestricted securities; and (6) the contemplated sale is not a transaction, or part of a series of transactions, which, although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration provisions of the U.S. Securities Act. Terms used herein have the meanings given to them by Regulation S.

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

X \_\_\_\_\_

Authorized signatory

\_\_\_\_\_

Name of Seller (please print)

\_\_\_\_\_

Name of authorized signatory (please print)

\_\_\_\_\_

Title of authorized signatory (please print)

**Affirmation By Seller's Broker-Dealer (required for sales in accordance with Section (B)(2)(b) above)**

We have read the foregoing representations of our customer, \_\_\_\_\_ (the "**Seller**") dated \_\_\_\_\_, with regard to our sale, for such Seller's account, of the securities of the Corporation described therein, and on behalf of ourselves we certify and affirm that (A) we have no knowledge that the transaction had been prearranged with a buyer in the United States, (B) the transaction was executed on or through the facilities of designated offshore securities market, (C) neither we, nor any person acting on our behalf, engaged in any directed selling efforts in connection with the offer and sale of such securities, and (D) no selling concession, fee or other remuneration is being paid to us in connection with this offer and sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent. Terms used herein have the meanings given to them by Regulation S.

\_\_\_\_\_  
Name of Firm

By: \_\_\_\_\_  
Authorized officer

Date: \_\_\_\_\_