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**CONVERTIBLE DEBENTURE INDENTURE**

Made as of August 19, 2022

Between

**HYBRID POWER SOLUTIONS INC.**

and

**ODYSSEY TRUST COMPANY**

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## CONVERTIBLE DEBENTURE INDENTURE

This Convertible Debenture Indenture is made effective as of the 19th day of August, 2022.

**BETWEEN:**

**HYBRID POWER SOLUTIONS INC.**, a corporation existing under the laws of British Columbia and having its head office in Toronto, Ontario

(the “**Corporation**”)

**AND:**

**ODYSSEY TRUST COMPANY** a trust company incorporated under the laws of Alberta and having an office in Calgary, Alberta

(the “**Trustee**”)

**WHEREAS** the Corporation wishes to create and issue \$1,628,500 in aggregate principal amount of unsecured convertible debentures (the “**Debentures**”) in the manner and subject to the terms and conditions of this Indenture.

**NOW THEREFORE THIS INDENTURE WITNESSES** that in consideration of the respective covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Corporation and the Trustee (each, a “**Party**” and, together, the “**Parties**”) covenant and agree, for the benefit of each other and for the equal and rateable benefit of the Debentureholders, as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

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

“**this Indenture**”, “**this Convertible Debenture Indenture**”, “**hereto**”, “**herein**”, “**hereby**”, “**hereunder**”, “**hereof**” and similar expressions refer to this Indenture and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto;

“**Agent**” means Research Capital Corporation;

“**Applicable Securities Legislation**” means applicable securities laws (including rules, regulations, policies and instruments) in each of the provinces and territories of Canada;

“**Approved Bank**” has the meaning ascribed hereto in Section 12.9;

“**Auditors of the Corporation**” means an independent firm of chartered accountants duly appointed as

auditors of the Corporation;

“**Board**” means the board of directors of the Corporation or any committee thereof;

“**Brokered Offering**” means the brokered private placement of up to \$1,200,000 aggregate principal amount of Debentures;

“**Brokered Subscribers**” means the subscribers of the Brokered Offering;

“**Business Day**” means any day other than a Saturday, Sunday or any other day that the Trustee or banking institutions in Vancouver, British Columbia are generally open for business;

“**Closing Date**” means the closing date of the Brokered Offering and the Non-Brokered Offering, as applicable;

“**Common Shares**” means common shares in the capital of the Corporation, as such common shares are constituted on the date of execution and delivery of this Indenture; provided that in the event of a change or a subdivision, revision, reduction, combination or consolidation thereof; any reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up; or successive changes, subdivisions, redivisions, reductions, combinations or consolidations, reclassifications, capital reorganizations, consolidations, amalgamations, arrangements, mergers, sales or conveyances or liquidations, dissolutions or windings-up, then, subject to adjustments, if any, having been made in accordance with the provisions of Section 5.1, “**Common Shares**” shall mean the shares or other securities or property resulting from such change, subdivision, redivision, reduction, combination or consolidation, reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, sale or conveyance or liquidation, dissolution or winding-up;

“**Conversion**” has the meaning ascribed thereto in Section 2.2(i);

“**Conversion Date**” has the meaning ascribed thereto in Section 2.2(i);

“**Conversion Price**” means \$0.20 per Unit;

“**Corporation**” means Hybrid Power Solutions Inc. and includes any successor to or of the Corporation that shall have complied with the provisions of Article 9;

“**Counsel**” means a barrister or solicitor or firm of barristers or solicitors retained or employed by the Trustee or retained or employed by the Corporation and reasonably acceptable to the Trustee;

“**Current Market Price**” for any date means the VWAP on a Recognized Exchange for the 20 consecutive Trading Days (which must be calculated utilizing days in which the Common Shares actually trade) ending on the fifth Trading Day preceding the date of the applicable event. If the Common Shares are not listed or quoted on a Recognized Exchange, reference shall be made for the purpose of the above calculation to the principal securities exchange or market on which the Common Shares are listed or quoted or, if no such prices are available, “**Current Market Price**” shall be the fair value of a Common Share as reasonably determined by the Board. The VWAP shall be determined by dividing the aggregate sale price of all Common Shares sold on the said exchange, as the case may be, during the said 20 consecutive Trading Days by the total number of Common Shares, as the case may be, so sold;



“**CSE**” means the Canadian Securities Exchange or its successor or successors;

“**Debentureholders**” or “**holders**” means the Persons for the time being entered in the register for Debentures as registered holders of Debentures or any transferees of such Persons by endorsement or delivery;

“**Debentures**” means the unsecured convertible debentures of the Corporation designated as “Unsecured Convertible Debentures” and described in Section 2.2;

“**Defeased Debentures**” has the meaning ascribed thereto in Section 8.6(b);

“**Definitive Debenture**” means a certificated Debenture fully registered in the name of the holder thereof;

“**Distributed Securities**” has the meaning ascribed thereto in Section 5.1(d);

“**Event of Default**” has the meaning ascribed thereto in Section 7.1;

“**Extended Maturity Date**” has the meaning ascribed thereto in Section 2.2(e);

“**Extraordinary Resolution**” has the meaning ascribed thereto in Section 10.12;

“**Going Public Transaction**” means: (I) the listing of the Common Shares on a recognized stock exchange in Canada or United States through the IPO; or (II) the completion of a transaction other than the IPO including a qualifying transaction, reverse takeover, reverse or forward triangular merger, amalgamation, merger, share exchange, plan of arrangement, business combination or similar transaction) between the Issuer and another company (or companies) which results in the shareholders of the Issuer receiving, in exchange for their securities, securities of a company listed on a recognized stock exchange in Canada or United States;

“**IFRS**” means International Financial Reporting Standards;

“**Interest Calculation Date**” means in June 30 and December 31, the Conversion Date or the Redemption Date, as applicable;

“**Interest Obligation**” means the obligation of the Corporation to pay interest on the Debentures, in accordance with the terms of this Indenture;

“**Interest Payment Date**” means 20 calendar days following an applicable Interest Calculation Date (other than the Maturity Date), or, if such a day is not a Business Day, the next Business Day;

“**IPO**” means an initial public offering of the Corporation’s securities with (i) the Agent; or (ii) any other registered agent, broker and/or underwriter, which in the case of Debentures issued pursuant to the Brokered Offering, will require the Agent’s prior written consent (which consent is not to be unreasonably withheld);

“**Lien**” shall mean any hypothec, mortgage, charge, pledge, lien (statutory or otherwise), security interest

or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a lien or security interest in any asset;

**“Maturity Account”** means an account or accounts required to be established by the Corporation (and which shall be maintained by and subject to the control of the Trustee) for the Debentures issued pursuant to and in accordance with this Indenture;

**“Maturity Date”** has the meaning ascribed thereto in Section 2.2(b);

**“Non-Brokered Offering”** means the non-brokered private placement of up to \$458,500 aggregate principal amount of Debentures;

**“Offering”** means the Non-Brokered Offering and the Brokered Offering;

**“Officers’ Certificate”** means a certificate of the Corporation signed by any two authorized officers or directors of the Corporation, in their capacities as officers or directors of the Corporation, and not in their personal capacities;

**“Outside Date”** means the date that is 180 days from the date of the Preliminary Receipt;

**“Outstanding Debentures”** means the unsecured non-transferable \$0.02 convertible debentures issued by the Corporation;

**“Person”** includes an individual, corporation, company, partnership, joint venture, association, trust, trustee, unincorporated organization or government, or any agency or political subdivision thereof;

**“Preliminary Prospectus”** means a long form preliminary prospectus filed by the Corporation with applicable securities commissions in connection with a Going Public Transaction;

**“Preliminary Prospectus Deadline”** means the date that is one year from the Closing Date;

**“Preliminary Prospectus Delay”** has the meaning set out in Section 2.2(d) of this Agreement;

**“Preliminary Receipt”** mean a receipt for the Preliminary Prospectus, which evidences that a receipt has been or has been deemed to be issued for the Preliminary Prospectus from all applicable securities commissions including the principal regulator and such other regulators pursuant to Multilateral Instrument 11-102 – *Passport System*;

**“Principal Amount”** means the aggregate principal amount of the Debentures;

**“Receiver”** means a receiver or a receiver-manager;

**“Recognized Stock Exchange”** means the CSE or, if the Common Shares are not listed on the CSE, any other national securities exchange or market on which the Common Shares are then listed and posted for trading in Canada or United States;

**“Redemption Date”** means any date on which Debentures may be wholly or partially redeemed in accordance with the terms of this Indenture;

**“Regulation S”** means Regulation S adopted by the United States Exchange Commission under the U.S. Securities Act;

**“Spinoff Securities”** has the meaning ascribed thereto in Section 5.1(e);

**“Spinoff Valuation Period”** has the meaning ascribed thereto in Section 5.1(e);

**“Subsidiary”** has the meaning ascribed thereto in the *Securities Act* (Ontario);

**“Tax Act”** means the *Income Tax Act* (Canada), as amended from time to time;

**“Taxes”** means any present or future tax, duty, levy, impost, assessment or other governmental charge, including, without limitation any such charges or taxes imposed under Part XIII of the Tax Act or any successor legislation of similar effect (and including, without limitation, penalties, interest and other liabilities related thereto) imposed by any Taxing Jurisdiction;

**“Taxing Jurisdiction”** means the Government of Canada or of any province or territory of Canada or by any authority or agency thereof or therein having power to tax;

**“Trading Day”** means, with respect to the CSE or other market on which the Common Shares are then principally traded or quoted, any day on which such exchange or market is open for trading or quotation;

**“Trustee”** means Odyssey Trust Company, or its successor or successors for the time being as trustee hereunder;

**“Unit”** means a unit comprised of one Unit Share and one-half of one transferable Warrant;

**“Unit Shares”** means the Common Shares comprising the Units;

**“Unit Securities”** means, collectively, the Unit Shares, Warrants and Warrant Shares issuable upon Conversion;

**“United States”** or **“U.S.”** means the United States of America, its territories and possessions, any state of the United States and the District of Columbia;

**“U.S. Legend”** has the meaning ascribed thereto in Section 2.9(a);

**“U.S. Person”** means “U.S. person” as defined in Regulation S;

**“U.S. Securities Act”** means the United States *Securities Act of 1933*, as amended;

**“U.S. Securities Exchange Act”** means the United States *Securities Exchange Act of 1934*, as amended;

**“VWAP”** means the volume-weighted average trading price of the Common Shares on a Recognized Exchange for the applicable period (calculated in the manner set out in the definition of “Current Market Price” utilizing days in which the Common Shares actually trade);

**"Warrant"** means a whole warrant entitling the holder thereof to purchase one Warrant Share any time prior to the date that is two years from the Conversion Date upon payment of \$0.60 per Warrant Share, subject to acceleration, in accordance with the terms and conditions of the Warrant Indenture;

**"Warrant Indenture"** means the warrant indenture between the Corporation and Odyssey Trust Company dated the date hereof pursuant to which the Warrants will be issued upon conversion of the Debentures;

**"Warrant Shares"** means the Common Shares issuable upon exercise of a Warrant in accordance with the terms and conditions of the Warrant Indenture;

**"Withholding Taxes"** has the meaning ascribed thereto in Section 2.11; and

**"Written Direction of the Corporation"** means an instrument in writing signed by any one officer or director of the Corporation.

### **1.2 Meaning of "Outstanding"**

Every Debenture certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled, converted or redeemed, or delivered to the Trustee for cancellation, conversion or redemption, for monies and/or Units, as the case may be, or for which the payment thereof shall have been set aside under Section 8.2, provided that:

- (a) Debentures which have been partially redeemed, purchased or converted shall be deemed to be outstanding only to the extent of the unredeemed, unpurchased or unconverted part of the principal amount thereof;
- (b) when a new Debenture has been issued in substitution for a Debenture which has been lost, stolen or destroyed, only one of such Debentures shall be counted for the purpose of determining the aggregate principal amount of Debentures outstanding; and
- (c) for the purposes of any provision of this Indenture entitling holders of outstanding Debentures to vote, sign consents, requisitions or other instruments, or take any other action under this Indenture, or to constitute a quorum of any meeting of Debentureholders, Debentures owned directly or indirectly, legally or equitably, by the Corporation shall be disregarded.

### **1.3 Interpretation**

In this Indenture:

- (a) words importing the singular number or masculine gender shall include the plural number or the feminine or neuter genders, and vice versa;
- (b) all references to Articles and Schedules refer, unless otherwise specified, to articles of and schedules to this Indenture;
- (c) all references to Sections refer, unless otherwise specified, to Sections, subsections or clauses of this Indenture;

- (d) words and terms denoting inclusiveness (such as “include” or “includes” or “including”), whether or not so stated, are not limited by and do not imply limitation of their context or the words or phrases which precede or succeed them;
- (e) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time;
- (f) unless otherwise indicated, reference to a statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time; and
- (g) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated by including the day on which the period commences and excluding the day on which the period ends.

#### **1.4 Headings, Etc.**

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

#### **1.5 Time of Essence**

Time shall be of the essence of this Indenture.

#### **1.6 Monetary References**

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

#### **1.7 Invalidity, Etc.**

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

#### **1.8 Language**

Each of the Parties hereby acknowledges that it has consented to and requested that this Indenture and all documents relating thereto, including the form of Debenture attached hereto as Schedule A, be drawn up in the English language only. *Chacune des parties aux presentes reconnait avoir accepte et demande que cette acte de fiducie et tous les documents y relies, y compris le modele de debenture joint aux presentes a titre d'Annexe a soient rediges en anglais seulement.*

#### **1.9 Successors and Assigns**

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

**1.10 Severability**

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

**1.11 Entire Agreement**

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

**1.12 Benefits of Indenture**

Nothing in this Indenture or in the Debentures, express or implied, shall give to any Person, other than the Parties and their successors hereunder, the holders of Debentures, any benefit or any legal or equitable right, remedy or claim under this Indenture.

**1.13 Applicable Law and Attornment**

This Indenture, any supplemental indenture and the Debentures shall be governed by and interpreted in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and shall be treated in all respects as British Columbia contracts. With respect to any suit, action or proceedings relating to this Indenture, any supplemental indenture or any Debenture, the Corporation, the Trustee and each holder irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of British Columbia. The Parties hereby waive any right they may have to require a trial by jury of any proceeding commenced in connection herewith.

**1.14 Currency of Payment**

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

**1.15 Non-Business Days**

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

### 1.16 Accounting Terms

Except as hereinafter provided or as otherwise indicated in this Indenture, all calculations required or permitted to be made hereunder shall be made in accordance with IFRS.

### 1.17 Calculations

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

### 1.18 Schedules

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

Schedule A	–	Form of Debenture
Schedule B	–	Form of Declaration for Removal of Legend

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

## ARTICLE 2 THE DEBENTURES

### 2.1 Limit of Debentures

The aggregate principal amount of Debentures authorized to be issued under this Indenture is \$1,628,500, and Debentures may be issued only upon and subject to the conditions and limitations herein set forth.

### 2.2 Form and Terms of Debentures

(a) The Debentures authorized for issue immediately are limited to an aggregate principal amount of \$1,628,500 and shall be designated as "Unsecured Convertible Debentures" and in the form set out in Schedule A hereto.

(b) The Debentures shall be dated as of the date hereof and shall mature on the date that is the later of two (2) years from the Closing Date or the Outside Date (the "**Maturity Date**").

(c) Except as otherwise provided herein, the Debentures will bear no interest and with respect to the Debentures issued pursuant to the Non-Brokered Offering, are re-payable to Debentureholders on the Maturity Date, and with respect to the Debentures issued pursuant to the Brokered Offering, are re-payable at the Agent's direction on behalf of the Brokered Subscribers, on the Maturity Date;

(d) Notwithstanding the foregoing, if the Corporation fails to file the Preliminary Prospectus by the Preliminary Prospectus Deadline (a "**Preliminary Prospectus Delay**"), the Debentures will accrue interest at the rate of 10% per annum compounded monthly on an accrual basis, payable on a semi-annual basis to

the Agent on behalf of the Brokered Subscribers or, in the case of Debentureholders who are not Brokered Subscribers, directly to the Debentureholders, respectively, calculated from and including the Closing Date until the earlier of the Conversion Date and the date all of the Principal Amount has been repaid. For greater certainty, any interest accrued prior to the Preliminary Prospectus Deadline will be paid on the semi-annual payment dates in the subsequent year.

(e) Notwithstanding the foregoing if the Corporation files the Preliminary Prospectus prior to the Maturity Date, but does not complete the IPO for minimum gross proceeds of \$5,000,000 by the Outside Date (an “**IPO Miss**”), then, provided the Debenture remains outstanding and has not been repaid:

i) the Maturity Date will automatically be extended to the date which is five (5) years from the Closing Date (the “**Extended Maturity Date**”), and

ii) the Debenture will bear interest, payable to the Agent on behalf of the Brokered Subscribers or, in the case of Debentureholders who are not Brokered Subscribers, directly to the Debentureholders, respectively, at the prime rate (as set out from time to time by the Bank of Canada on its website at the beginning of each calendar quarter) on an accrual basis and calculated from and including the Outside Date until the earlier of the Conversion Date and the date all of the Principal Amount has been repaid, subject to the Corporation’s prepayment right set out below.

(f) If prior to the Maturity Date there are both a Preliminary Prospectus Delay and an IPO Miss (for clarity, a scenario where the Corporation files a Preliminary Prospectus after the Preliminary Prospectus Deadline and such filing is followed by an IPO Miss), then the Debenture will accrue interest, payable to the Agent on behalf of the Brokered Subscribers or, in the case of Debentureholders who are not Brokered Subscribers, directly to the Debentureholders, respectively, for the first two years from the Closing Date at a rate of 10% per annum and thereafter at a rate of 10% per annum, compounded monthly on an accrual basis, until the earlier of the Conversion Date and the date on which all of the Principal Amount has been repaid, subject to any prepayment by the Corporation in accordance with this Indenture.

(g) For clarity, the interest rates contemplated in this Section 2.2 with respect to Preliminary Prospectus Delay in Section 2.2(d), IPO Miss in Section 2.2(e), and Preliminary Prospectus Delay and an IPO Miss in Section 2.2(f) contemplate different scenarios, are not intended to apply concurrently, and the Debentures will in no circumstances accrue interest under multiple concurrent rates. If any of the interest rates contemplated in Section 2.2(d), (e), or (f) becomes applicable, the Corporation shall promptly provide written notice to the Trustee specifying the applicable interest rate.

(h) If there is an IPO Miss, then the Corporation may, at any time following the Outside Date, prepay, without penalty, all or a portion of the Principal Amount and interest outstanding under the Debenture in cash prior to the Extended Maturity Date and, all or any portion of such amounts becoming due under the Debenture.

(i) If the Corporation completes a Going Public Transaction, then the Principal Amount, and at the Corporation’s discretion any interest on the Debentures accrued in accordance with this Indenture, will automatically be converted (the “**Conversion**”), without payment of additional consideration and without further action on the part of the Debentureholder, into Units at the Conversion Price on either the Listing Date or a date that is within 10 business days (before or after) of the Listing Date (such date to be determined by the Board in its sole discretion) (the “**Conversion Date**”), subject to any applicable stock exchange acceptance and securities laws.



(j) Each Unit will be comprised of one Common Share and one-half of one transferable Warrant. Each Warrant is exercisable into one Warrant Share at \$0.60 per Warrant Share for a period of two years from the Conversion Date, subject to acceleration as set out below.

(k) If over a period of 15 consecutive trading days between the date of issuance and the expiry of the Warrants following the Listing Date, the daily volume weighted average trading price of the Common Shares (on a stock exchange where the Common Shares are listed for trading and the majority of the trading volume occurs) exceeds \$0.80 on each of those 15 consecutive days, the Corporation may, at any time after such an occurrence, give written notice (via news release or direct written notice) to the holders of the Warrants that the Warrants will expire at 4:00 p.m. (Vancouver time) on the 30th day following the giving of notice (the “**Accelerated Exercise Period**”). Upon receipt of such notice, the holders of the Warrants will have 30 days to exercise their Warrants. Any Warrants which remain unexercised at the end of the Accelerated Exercise Period will automatically expire at that time. Any insiders who are unable to exercise their Warrants due to any ‘blackout period’ being in effect during the term of their Warrants will automatically have their Accelerated Exercise Period extended by the aggregate time of the blackout period(s).

(l) The Warrants will be created and issued pursuant to the terms of a Warrant Indenture to be entered into on the Closing Date between the Corporation and warrant agent to be appointed by the Corporation (the “**Warrant Agent**”).

(m) The Debentures may be represented by NCI uncertificated securities or DRS advice statements under the Brokered Offering. If the Agent elects to proceed in this manner, Brokered Subscribers will not receive physical certificates representing their ownership. In the event the Debentures are represented by NCI uncertificated securities, registration of interests in and transfers of the Debentures may be made only through electronic records, and if so made, the ability of the holder to pledge the Debentures or otherwise take action with respect to the holder’s interest in the Debentures may be limited due to the lack of a physical Debenture Certificate.

(n) The Debentures may also be issued in the form of Definitive Debentures or DRS advice statements under the Non-Brokered Offering. Any Definitive Debentures will be registered in the names of each holder thereof as provided in Section 3.1. A Definitive Debenture may be exchanged, or transferred to and registered in the name of a Person other than the registered holder thereof, as provided in Section 3.2.

### **2.3 Execution of Debentures**

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

## 2.4 Certification

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

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

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

## 2.5 Mutilation, Loss, Theft or Destruction

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

## 2.6 Concerning Interest

For purposes of Sections 2.2(d), 2.2(e) and 2.2(f), interest for any period shall be computed on the basis of a year of 365 days and the actual number of days elapsed in such period. With respect to the Debentures, for the purposes of disclosure under the *Interest Act* (Canada), whenever interest is computed on the basis of a year (the “**deemed year**”) which contains fewer days than the actual number

of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in such calendar year of calculation and dividing it by the number of days in the deemed year.

## **2.7 Rank**

Debentures will be direct, unsecured obligations of the Corporation and will rank *pari passu* with one another and repayment of such Debentures will be made to the Debentureholders thereof on a *pari passu* basis. The Debentures will be subordinate to the Outstanding Debentures.

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

Except as may otherwise be provided herein or in any supplemental indenture, payments of amounts due upon maturity of the Debentures on the Maturity Date or the Extended Maturity Date, as applicable, will be made in the following manner. The Corporation will establish and maintain with the Trustee a Maturity Account for the Debentures. The Maturity Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. On or before 9:00 a.m. (Vancouver time) on the Business Day immediately prior to the Maturity Date for the Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer for deposit in the Maturity Account in an amount sufficient to pay the aggregate principal amount together with any accrued and unpaid interest thereon the Corporation has elected to pay in cash. The Trustee, on behalf of the Corporation, will pay to each holder entitled to receive payment the principal amount of, any accrued and unpaid interest the Corporation has elected to pay in cash on, the Debenture, upon surrender of the Debenture at any branch of the Trustee designated for such purpose from time to time by the Corporation and the Trustee. The delivery of such funds to the Trustee for deposit to the Maturity Account will satisfy and discharge the liability of the Corporation for the Debentures to which the delivery of funds relates to the extent of the amount delivered and such Debentures will thereafter to that extent not be considered as outstanding under this Indenture and such holder will have no other right in regard thereto other than to receive out of the money so delivered or made available the amount to which it is entitled and interest on the Debentures shall cease to accrue as of the Maturity Date. Any accrued and unpaid interest due as of the Maturity Date shall be paid in accordance with Article 6 hereof.

## **2.9 U.S. Legend on the Debentures and Unit Shares and Unit Warrants**

(a) The Debentures and the Unit Securities issuable upon conversion thereof have not been and will not be registered under the U.S. Securities Act or under the securities laws of any U.S. States. Any Debentures issued in the U.S. or to a U.S. Person, or to a Person acting for the account or benefit of a person in the U.S. or a U.S. Person are, and any Unit Securities issued upon conversion of such Debentures will be, “restricted securities” as defined in Rule 144(a)(3) under the U.S. Securities Act, and shall be issued in definitive (not global) form, and the certificates or other instruments representing such Unit Securities issued upon conversion of such Debentures shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates) (the “**U.S. Legend**”):

“THE SALE OF THIS DEBENTURE AND ANY SECURITIES ISSUABLE UPON ITS CONVERSION HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”), OR ANY U.S. STATE SECURITIES LAWS, AND ACCORDINGLY, THIS DEBENTURE AND ANY SECURITIES ISSUABLE UPON ITS CONVERSION MAY NOT BE OFFERED OR SOLD EXCEPT

AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR A BENEFICIAL INTEREST HEREIN, THE HOLDER AGREES FOR THE BENEFIT OF HYBRID POWER SOLUTIONS INC. (THE "COMPANY") THAT IT WILL NOT OFFER, RESELL, PLEDGE OR OTHERWISE TRANSFER THE DEBENTURES EVIDENCED HEREBY OR THE SECURITIES ISSUABLE UPON THEIR CONVERSION EXCEPT (A) TO THE COMPANY; (B) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER ("QIB") WITHIN THE MEANING OF RULE 144A UNDER THE U.S. SECURITIES ACT THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QIB AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN ACCORDANCE WITH RULE 144A (IF AVAILABLE); (C) UNDER AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE U.S. SECURITIES ACT, IF AVAILABLE; (D) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT; (E) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT OR (F) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT; PROVIDED THAT IN THE CASE OF TRANSFERS PURSUANT TO (C) OR (E) ABOVE, AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM SATISFACTORY TO THE COMPANY AND THE TRUSTEE MAY BE REQUIRED BY THE COMPANY AND THE TRUSTEE PRIOR TO SUCH OFFER, SALE OR TRANSFER; AND IN THE CASE OF TRANSFERS PURSUANT TO (F) ABOVE, AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM SATISFACTORY TO THE COMPANY AND THE TRUSTEE WILL BE REQUIRED PRIOR TO SUCH OFFER, SALE OR TRANSFER. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON A CANADIAN STOCK EXCHANGE."

(b) Notwithstanding Section 2.9(a), provided that the Debentures or the Unit Securities issuable upon conversion, redemption or maturity thereof are being sold in compliance with the requirements of Rule 904 of Regulation S, and provided that the Corporation is a "foreign issuer" within the meaning of Regulation S at the time of sale, the U.S. Legend may be removed by providing a declaration to the Trustee substantially as set forth in Schedule D hereto (or as the Corporation may prescribe from time to time); together with any other evidence reasonably requested by the Corporation or Trustee, which evidence may include an opinion of Counsel of recognized standing, in form and substance reasonably satisfactory to the Corporation or the Trustee, to the effect that the U.S. Legend is no longer required pursuant to the requirements of the U.S. Securities Act or applicable state securities laws; and provided, further, that if the Debentures are being sold under Rule 144 of the U.S. Securities Act, the U.S. Legend may be removed by delivery to the Trustee of an opinion of Counsel, of recognized standing or other evidence reasonably satisfactory to the Trustee and the Corporation, that the U.S. Legend is no longer required under the U.S. Securities Act or applicable state securities laws. Provided that the Trustee obtains confirmation from the Corporation that such Counsel is satisfactory to it, the Trustee shall be entitled to rely on such opinion of Counsel without further inquiry.

(c) Any Unit Securities issued upon the conversion of a Debenture that are to be delivered into an address in the United States or having a registration address in the United States will have the U.S. legend unless the registered holder of such Unit Securities provides to the Trustee and Corporation an opinion of Counsel of recognized standing or other evidence reasonably satisfactory to the Trustee and the Corporation that the U.S. legend is not required under the U.S. Securities Act or applicable state securities laws.

## **2.10 Payment of Interest In Cash**

(a) In the event of a Preliminary Prospectus Delay, for Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer in an amount sufficient to pay the cash amount payable in respect of such Debentures regarding any accrued and unpaid interest thereon calculated in accordance with Section 2.2(d), and including any Taxes required by applicable law to be deducted or withheld by the Trustee and remitted to the applicable governmental authority, which the Trustee shall deduct and remit as required by applicable law.

(b) In the event of a IPO Miss, for Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer in an amount sufficient to pay the cash amount payable in respect of such Debentures regarding any accrued and unpaid interest thereon calculated in accordance with Section 2.2(e), and including any Taxes required by applicable law to be deducted or withheld by the Trustee and remitted to the applicable governmental authority, which the Trustee shall deduct and remit as required by applicable law.

(c) In the event of both a Preliminary Prospectus Delay and an IPO Miss, for Debentures outstanding from time to time under this Indenture, the Corporation will deliver to the Trustee a certified cheque or wire transfer in an amount sufficient to pay the cash amount payable in respect of such Debentures regarding any accrued and unpaid interest thereon calculated in accordance with Section 2.2(f), and including any Taxes required by applicable law to be deducted or withheld by the Trustee and remitted to the applicable governmental authority, which the Trustee shall deduct and remit as required by applicable law.

(d) In the event that the Corporation elects to prepay all or a portion of the Principal Amount and interest outstanding under this Debenture in cash prior to the Extended Maturity Date, the Corporation will deliver to the Trustee a certified cheque or wire transfer in an amount sufficient to pay the cash amount payable in respect of such Debentures regarding any accrued and unpaid interest thereon calculated in accordance with Section 2.2(h), and including any Taxes required by applicable law to be deducted or withheld by the Trustee and remitted to the applicable governmental authority, which the Trustee shall deduct and remit as required by applicable law.

(e) Except as otherwise provided in Section 2.2(c) or specified in a resolution of the Board (subject to the consent of the Trustee, which consent shall not be unreasonably withheld): as any Interest Obligation becomes due on each Debenture (except, on conversion or on redemption, when the applicable Interest Obligation will be paid upon surrender of such Debenture), the Corporation, through the Trustee or any agent of the Trustee, shall send or forward by prepaid ordinary mail, electronic transfer of funds or such other means as may be agreed to by the Trustee, on or prior to the applicable Interest Payment Date, payment of such Interest Obligation to the order of the registered holder of such Debenture as appearing on the registers maintained by the Trustee at the close of business on the applicable Interest Calculation Date and addressed to the holder at the holder's last address appearing on the register, unless such holder otherwise directs. Provided the Trustee is in receipt of funds from the Corporation prior to making any payment, if payment is made by cheque, such cheque shall be forwarded at least three days prior to each applicable Interest Payment Date, and if payment is made by other means (such as electronic transfer of funds), such payment shall be made in a manner whereby the holder receives credit for such payment on such Interest Payment Date. The mailing of such cheque or the making of such payment by other means shall, to the extent of the sum represented thereby, plus the amount of any tax withheld as aforesaid, satisfy and discharge all liability for any Interest Obligation on such Debenture, unless in the case of

payment by cheque, such cheque is not paid at par on presentation. In the event of non-receipt of any cheque for or other payment of interest by the Person to whom it is so sent as aforesaid, the Corporation will issue to such Person a replacement cheque or other payment for a like amount upon being furnished with such evidence of non-receipt as it shall reasonably require and upon being indemnified to its satisfaction. Notwithstanding the foregoing, if the Corporation is prevented by circumstances beyond its control (including, without limitation, any interruption in mail service) from making payment of Interest Obligation due on each Debenture in the manner provided above, the Corporation may make payment of such Interest Obligation or make such Interest Obligation available for payment in any other manner acceptable to the Trustee, acting reasonably, with the same effect as though payment had been made in the manner provided above.

### **2.11 Withholdings**

All payments made by or on behalf of the Corporation under or with respect to the Debentures (including, without limitation, any penalties, interest and other liabilities related thereto) will be made free and clear of and without withholding, or deduction for, or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge (including, without limitation, penalties, interest and other liabilities related hereto) imposed or levied by or on behalf of the Government of Canada or the United States or elsewhere, or of any province or territory thereof or by any authority or agency therein or thereof having power to tax ("**Withholding Taxes**"), unless the Corporation is required by law or the interpretation or administration thereof, to withhold or deduct any amounts for, or on account of Withholding Taxes. If the Corporation is so required to withhold or deduct any amount for, or on account of, any Withholding Taxes from any payment made under or with respect to the Debentures, the Corporation shall deduct and withhold such Withholding Taxes from any payment to be made or with respect to the Debentures and, provided that the Corporation forthwith remits such amount to the relevant governmental authority or agency, the amount of any such deduction or withholding will be considered an amount paid in satisfaction of the Corporation's obligations under the Debentures. There is no obligation on the Corporation to gross-up or pay additional amounts to a holder of Debentures in respect of such deductions or withholdings. For greater certainty, if any amount is required to be deducted or withheld in respect of Withholding Taxes upon a conversion or redemption of a Debenture, the Corporation shall be entitled to liquidate such number of Common Shares (or other securities) issuable as a result of such conversion or redemption as shall be necessary in order to satisfy such requirement. The Corporation shall provide the Trustee with copies of receipts or other communications relating to the remittance of such withheld amount or the filing of any forms received from such government authority or agency promptly after receipt thereof.

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

### **3.1 Definitive Debentures**

(a) The Corporation shall cause to be kept by and at the principal office of the Trustee in Calgary, Alberta or such other registrar as the Corporation, with the approval of the Trustee, may appoint at such other place or places, if any, as may be specified in the Debentures or as the Corporation may designate with the approval of the Trustee, a register in which shall be entered the names and addresses of the holders of Debentures and particulars of the Debentures held by them respectively and of all transfers of Debentures. Such registration shall be noted on the Debentures by the Trustee or other registrar unless a new Debenture shall be issued upon such transfer.

(b) The Debentures shall be non-transferable and no transfer of any Debentures shall be valid or permitted, without the prior written consent of the Corporation.

(c) No transfer of a Definitive Debenture shall be valid unless made on such register referred to in Section 3.1(a) by the registered holder or such holder's executors, administrators or other legal representatives or an attorney duly appointed by an instrument in writing in form and executed in a manner satisfactory to the Trustee or other registrar upon surrender of the Debentures together with a duly executed form of assignment, including the acknowledgement by the transferee, and which forms part of the Definitive Debenture, acceptable to the Corporation and the Trustee and upon compliance with such other reasonable requirements as the Trustee or other registrar may prescribe, or unless the name of the transferee shall have been noted on the Debenture by the Trustee or other registrar.

### **3.2 Transferee Entitled to Registration**

(a) The transferee of a Debenture shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other registrar and upon compliance with all other conditions in that regard required by this Indenture or by law, to be entered on the register as the owner of such Debenture free from all equities or rights of set-off or counterclaim between the Corporation and the transferor or any previous holder of such Debenture, save in respect of equities of which the Corporation is required to take notice by statute or by order of a court of competent jurisdiction.

(b) The Corporation shall direct the Trustee in writing as to matters related to any applicable hold periods and Applicable Securities Legislation and legending restrictions and requirements. Notwithstanding any other provisions of this Indenture, on the issuance, conversion or transfer of any Debentures or any Unit Securities issuable upon conversion thereof, no duty or responsibility whatsoever shall rest upon the Trustee to determine or verify the compliance with any applicable laws or regulatory requirements including, without limitation, the legend contained in Section 2.9(a) or Regulation S of the U.S. Securities Act, and the Trustee shall be entitled to assume that all conversions and transfers of Debentures or any Units Securities issuable upon conversion thereof are permissible pursuant to all applicable laws and regulatory requirements and the terms of this Indenture.

(c) The Trustee may assume that the address of a Debentureholder on the register of the Debentures is the actual address of such Debentureholder and is also determinative of the residence of such Debentureholder and the address of any transferee to whom securities are transferred as shown on the transfer form is also determinative of the residence of such transferee.

### **3.3 No Notice of Trusts**

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

### **3.4 Registers Open for Inspection**

The registers referred to in Sections 3.1 and 3.2 shall at all reasonable times be open for inspection by the Corporation, the Trustee or any Debentureholder. Every registrar, including the Trustee, shall from

time to time when requested so to do by the Corporation or by the Trustee, in writing, furnish the Corporation or the Trustee, as the case may be, with a list of names and addresses of holders of registered Debentures entered on the register kept by them and showing the principal amount and serial numbers of the Debentures held by each such holder, provided the Trustee shall be entitled to charge a reasonable fee to provide such a list.

### **3.5 Exchanges of Debentures**

(a) Subject to Sections 3.1 and 3.6, Debentures in any authorized form or denomination, may be exchanged for Debentures in any other authorized form or denomination, having the same Maturity Date, bearing the same interest rate and of the same aggregate principal amount as the Debentures so exchanged.

(b) In respect of exchanges of Debentures permitted by Section 3.5(a), the Debentures may be exchanged only at the principal office of the Trustee in the City of Vancouver, British Columbia, or at such other place or places, if any, as may be specified in the Debentures and at such other place or places as may from time to time be designated by the Corporation with the approval of the Trustee. Any Debentures tendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Debentures necessary to carry out exchanges as aforesaid. All Debentures surrendered for exchange shall be cancelled.

(c) Debentures issued in exchange for Debentures which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect.

### **3.6 Closing of Registers**

(a) Neither the Corporation nor the Trustee nor any registrar shall be required to:

- (i) make transfers or exchanges of, or convert, any Definitive Debentures on any Interest Calculation Date or during the 20 calendar days thereafter, except as otherwise mutually agreed by the Trustee and the Corporation;
- (ii) make transfers or exchanges of, or convert, any Debentures on any Maturity Date, Redemption Date, or during the five preceding Business Days, except as otherwise mutually agreed by the Trustee and the Corporation; or
- (iii) make exchanges of any Debentures which will have been selected or called for redemption unless upon due presentation thereof for redemption such Debentures shall not be redeemed.

(b) Subject to any restriction herein provided, the Corporation with the approval of the Trustee may at any time close any register for the Debentures, other than those kept at the principal office of the Trustee in Vancouver, British Columbia, and transfer the registration of any Debentures registered thereon to another register (which may be an existing register) and thereafter such Debentures shall be deemed to be registered on such other register. Notice of such transfer shall be given to the holders of such Debentures.



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

For each Debenture exchanged, registered, transferred or discharged from registration, the Trustee or other registrar, except as otherwise herein provided, may make a reasonable charge for its services and in addition may charge a reasonable sum for each new Debenture issued (such amounts to be agreed upon from time to time by the Trustee and the Corporation), and payment of such charges and reimbursement of the Trustee or other registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the party requesting such exchange, registration, transfer or discharge from registration as a condition precedent thereto.

### **3.8 Ownership of Debentures**

(a) Unless otherwise required by law, the Person in whose name any registered Debenture is registered shall for all purposes of this Indenture be and be deemed to be the owner thereof and payment of or on account of the principal of and premium, if any, on such Debenture and interest thereon shall be made to such registered holder.

(b) The registered holder for the time being of any registered Debenture shall be entitled to the principal, premium, if any, and/or interest evidenced by such instrument, respectively, free from all equities or rights of set-off or counterclaim between the Corporation and the original or any intermediate holder thereof and all Persons may act accordingly and the receipt of any such registered holder for any such principal, or interest shall be a good discharge to the Trustee, any registrar and to the Corporation for the same and none shall be bound to inquire into the title of any such registered holder.

(c) Where Debentures are registered in more than one name, the principal, and interest from time to time payable in respect thereof may be paid to the order of all such holders, failing written instructions from them to the contrary, and the receipt of any one of such holders therefor shall be a valid discharge to the Trustee, any registrar and to the Corporation.

(d) In the case of the death of one or more joint holders of any Debenture the principal, premium, if any, and interest from time to time payable thereon may be paid to the order of the survivor or survivors of such registered holders and the receipt of any such survivor or survivors therefor shall be a valid discharge to the Trustee and any registrar and to the Corporation.

## **ARTICLE 4 CONVERSION OF DEBENTURES**

### **4.1. Applicability of Article**

(a) Any Debentures issued hereunder will be convertible into Units, at such conversion rate and in accordance with the provisions as expressed in this Indenture, and in such Debentures.

(b) Such right of conversion shall extend only to the maximum number of whole Units into which the aggregate principal amount of the Debenture may be converted.

### **4.2. Manner of Right to Convert**

(a) Notwithstanding anything contained herein, the Holder may not and has no right to convert this Debenture into Units.

(b) If the Corporation completes a Going Public Transaction, then the Principal Amount and, at the Corporation's discretion any interest on the Debentures accrued in accordance with this Indenture, will automatically be converted, without payment of additional consideration and without further action on the part of the Holder (other than surrendering all certificates representing the Debentures held by the Holder to the Trustee), into Units at the Conversion Price on the Conversion Date, subject to any applicable stock exchange acceptance and securities law. Upon completion of a Going Public Transaction, the Corporation shall forthwith, and in any event not later than the first Business Day thereafter give written notice to the Trustee of having completed a Going Public Transaction and the date upon which the Debentures will be automatically converted into Units.

(c) Upon receipt of a notice from the Corporation in accordance with Section 4.2(b), the Trustee will issue and deliver, or the Corporation will cause the transfer agent and warrant agent to issue, certificates, DRS advice statements, or NCI uncertificated securities representing the Unit Shares and Warrants, to the Agent on behalf of the Brokered Subscribers, or in the case of Debentureholders who are not Brokered Subscribers, the Trustee will deliver certificates or DRS advice statements representing the Unit Shares and Warrants directly to the Debentureholders. The Unit Shares and the Warrants will be issued and registered in the name and at the address of the Debentureholder shown on the face page of the Debenture being converted. For greater certainty, certificates representing the Debentures will be required to be surrendered to the Trustee by the Holder in order for the Holder to take possession of the certificates or DRS advice statements representing the Unit Shares and Warrants.

(d) If the Corporation does not complete a Going Public Transaction, the Conversion will not occur.

#### **4.3. Cancellation of Converted Debentures**

Subject to the provisions of Section 4.2 as to all Debentures converted in whole under the provisions of this Article 4 shall be forthwith delivered to and cancelled by the Trustee and no Debenture shall be issued in substitution for those converted. Upon Conversion, all rights of the Debentureholder will wholly cease and terminate and the Debenture will be void and of no effect.

### **ARTICLE 5 ADJUSTMENT OF CONVERSION PRICE**

#### **5.1 Adjustment of Conversion Price**

Subject to the requirements of any Recognized Stock Exchange on which the Common Shares are then listed, if any, the Conversion Price in effect at any date shall be subject to adjustment from time to time as set forth below.

(a) If and whenever at any time prior to the Time of Expiry, the Corporation shall (i) subdivide or re-divide the outstanding Common Shares into a greater number of shares, (ii) reduce, combine or consolidate the outstanding Common Shares into a smaller number of shares, or (iii) issue Common Shares to the holders of all or substantially all of the outstanding Common Shares by way of a dividend in the ordinary course, distribution (other than the issue of Common Shares to holders of Common Shares who have elected to receive dividends or distributions in the form of Common Shares in lieu of cash dividends or cash distributions paid in the ordinary course on the Common Shares), or otherwise, the Conversion Price in effect on the effective date of such subdivision, re-division, reduction, combination or consolidation or on the record date for such issue of Common Shares by way of a dividend or distribution,

as the case may be, shall in the case of any of the events referred to in (i) and (iii) above be decreased in proportion to the number of outstanding Common Shares resulting from such subdivision, re-division or dividend, or shall, in the case of any of the events referred to in (ii) above, be increased in proportion to the number of outstanding Common Shares resulting from such reduction, combination or consolidation. Such adjustment shall be made successively whenever any event referred to in this Section 5.1(a) shall occur. Any such issue of Common Shares by way of a dividend or distribution shall be deemed to have been made on the record date for the dividend or distribution for the purpose of calculating the number of outstanding Common Shares under subsections (c) and (d) of this Section 5.1.

(b) If and whenever at any time prior to the Time of Expiry, the Corporation shall fix a record date for the issuance of options, rights or warrants to all or substantially all the holders of its outstanding Common Shares entitling them, for a period expiring not more than 45 days after such record date, to subscribe for or purchase Common Shares (or securities convertible into Common Shares) at a price per share (or having a conversion or exchange price per share) less than 95% of the Current Market Price of a Common Share on such record date, the Conversion Price shall be adjusted immediately after such record date so that it shall equal the price determined by multiplying the Conversion Price in effect on such record date by a fraction, of which the numerator shall be the total number of Common Shares outstanding on such record date plus a number of Common Shares equal to the number arrived at by dividing the aggregate price of the total number of additional Common Shares offered for subscription or purchase (or the aggregate conversion or exchange price of the convertible securities so offered) by such Current Market Price per Common Share, and of which the denominator shall be the total number of Common Shares outstanding on such record date plus the total number of additional Common Shares offered for subscription or purchase (or into which the convertible securities so offered are convertible). Such adjustment shall be made successively whenever such a record date is fixed. To the extent that any such options, rights or warrants are not so issued or any such options, rights or warrants are not exercised prior to the expiration thereof, the Conversion Price shall be re-adjusted to the Conversion Price which would then be in effect if such record date had not been fixed or to the Conversion Price which would then be in effect if the number of Common Shares (or securities convertible into Common Shares) actually issued upon the exercise of such options, rights or warrants were included in such fraction, as the case may be.

(c) If and whenever at any time prior to the Time of Expiry, there is a reclassification of the Common Shares or a capital reorganization of the Corporation other than as described in Section 5.1(a) or a consolidation, amalgamation, arrangement, binding share exchange, merger of the Corporation with or into any other Person or acquisition of the Corporation or other combination pursuant to which the Common Shares are converted into or acquired for cash, securities or other property; or a sale or conveyance of the property and assets of the Corporation as an entirety or substantially as an entirety to any other Person (other than a direct or indirect wholly-owned Subsidiary of the Corporation) or a liquidation, dissolution or winding-up of the Corporation, any holder of a Debenture who has not exercised its right of conversion prior to the effective date of such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, upon the exercise of such right thereafter, shall, subject to the immediately following paragraph, be entitled to receive and shall accept, in lieu of the number of Common Shares then sought to be acquired by it, such amount of cash or the number of shares or other securities or property of the Corporation or of the Person resulting from such merger, amalgamation, arrangement, acquisition, combination or consolidation, or to which such sale or conveyance may be made or which holders of Common Shares receive pursuant to such liquidation, dissolution or winding-up, as the case may be, that such holder of a Debenture would have been entitled to receive on such reclassification, capital reorganization, consolidation, amalgamation, arrangement,

merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, if, on the record date or the effective date thereof, as the case may be, the holder had been the registered holder of the number of Common Shares sought to be acquired by it and to which it was entitled to acquire upon the exercise of the conversion right. If determined appropriate by the Board, to give effect to or to evidence the provisions of this Section 5.1(c), the Corporation, its successor, or such purchasing Person, as the case may be, shall, prior to or contemporaneously with any such reclassification, capital reorganization, consolidation, amalgamation, arrangement, merger, share exchange, acquisition, combination, sale or conveyance or liquidation, dissolution or winding-up, enter into an indenture which shall provide, to the extent possible, for the application of the provisions set forth in this Indenture with respect to the rights and interests thereafter of the holder of Debentures to the end that the provisions set forth in this Indenture shall thereafter correspondingly be made applicable, as nearly as may reasonably be, with respect to any cash, shares or other securities or property to which a holder of Debentures is entitled on the exercise of its acquisition rights thereafter. Any indenture entered into between the Corporation and the Trustee pursuant to the provisions of this Section 5.1(c) shall be a supplemental indenture entered into pursuant to the provisions of Article 13. Any indenture entered into between the Corporation, any successor to the Corporation or such purchasing Person and the Trustee shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided in this Section 5.1(c) and which shall apply to successive reclassifications, capital reorganizations, amalgamations, consolidations, mergers, share exchanges, acquisitions, combinations, sales or conveyances. Notice of any transaction to which this Section 5.1(c) applies shall be given in accordance with Section 5.4.

(d) If the Corporation shall make a distribution to all or substantially all of the holders of Common Shares in the capital of the Corporation other than Common Shares, or evidences of indebtedness or other assets of the Corporation, including securities (but excluding (x) any issuance of rights or warrants for which an adjustment was made pursuant to Section 5.1(b) and any dividend or distribution paid exclusively in cash for which an adjustment was made pursuant to Section 5.1(a)) (the “**Distributed Securities**”), then in each such case (unless the Corporation at its option chooses to distribute such Distributed Securities to the holders of Debentures on such dividend or distribution date (as if each holder had converted such Debenture into Common Shares immediately preceding the record date with respect to such distribution)) the Conversion Price in effect immediately preceding the record date fixed for the dividend or distribution shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately preceding such record date by a fraction of which the denominator shall be the Current Market Price for the Common Shares immediately prior to the record date and of which the numerator shall be the Current Market Price per Common Share on such record date less the fair market value (as determined by the Board, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officers’ Certificate delivered to the Trustee, all subject to the approval of the CSE or other Recognized Stock Exchange, if required) on such record date of the portion of the Distributed Securities so distributed applicable to one Common Share (determined on the basis of the number of Common Shares outstanding at the close of business on such record date). Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such dividend or distribution had not been declared.

(e) Notwithstanding the foregoing, if the securities distributed by the Corporation to all holders of its Common Shares consist of capital stock of, or similar equity interests in, a Subsidiary or other business of the Corporation (the “**Spinoff Securities**”), the Conversion Price shall be adjusted, unless the Corporation

at its option chooses to make an equivalent distribution to the holders of Debentures, so that the same shall be equal to the rate determined by multiplying the Conversion Price in effect on the record date fixed for the determination of shareholders entitled to receive such distribution by a fraction, the denominator of which shall be the sum of (A) the weighted average trading price of one Common Share over the 20 consecutive Trading Day period (the "**Spinoff Valuation Period**") commencing on and including the fifth Trading Day after the date on which ex-dividend trading commences for such distribution on the CSE or other Recognized Stock Exchange and (B) the product of (i) the weighted average trading price (calculated in substantially the same way as the Current Market Price is calculated for the Common Shares) over the Spinoff Valuation Period of the Spinoff Securities or, if no such prices are available, the fair market value of the Spinoff Securities as reasonably determined by the Board (which determination shall be conclusive and shall be evidenced by an Officers' Certificate delivered to the Trustee but shall be subject to the approval of the CSE or other Recognized Stock Exchange, if required) multiplied by (ii) the number of Spinoff Securities distributed in respect of one Common Share and the numerator of which shall be the weighted average trading price of one Common Share over the Spinoff Valuation Period, such adjustment to become effective immediately preceding the opening of business on the 25th Trading Day after the date on which ex-dividend trading commences; provided, however, that the Corporation may in lieu of the foregoing adjustment elect to make adequate provision so that each holder of Debentures shall have the right to receive upon conversion thereof the amount of such Spinoff Securities that such holder of Debentures would have received if such Debentures had been converted on the record date with respect to such distribution.

(f) In any case in which this Section 5.1 shall require that an adjustment shall become effective immediately after a record date for an event referred to herein, the Corporation may defer, until the occurrence of such event, issuing to the holder of any Debenture converted after such record date and before the occurrence of such event the additional Units issuable upon such conversion by reason of the adjustment required by such event before giving effect to such adjustment; provided, however, that the Corporation shall deliver to such holder an appropriate instrument evidencing such holder's right to receive such additional Units upon the occurrence of the event requiring such adjustment and the right to receive any distributions made on such additional Unit Shares declared in favour of holders of record of Common Shares on and after the Conversion Date or such later date as such holder would, but for the provisions of this Section 5.1(f), have become the holder of record of such additional Units pursuant to Section 4.1(b).

(g) The adjustments provided for in this Section 5.1 are cumulative and shall apply to successive subdivisions, redivisions, reductions, combinations, consolidations, distributions, issues or other events resulting in any adjustment under the provisions of this Section 5.1, provided that, notwithstanding any other provision of this Section 5.1, no adjustment of the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided however, that any adjustments which by reason of this Section 5.1(g) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(h) For the purpose of calculating the number of Common Shares outstanding, Common Shares owned by or for the benefit of the Corporation shall not be counted.

(i) In the event of any question arising with respect to the adjustments provided in this Section 5.1, such question shall be conclusively determined by a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation); such accountants shall have access to all necessary records of the Corporation, and such

determination shall be binding upon the Corporation, the Trustee and the Debentureholders.

(j) In case the Corporation shall take any action affecting the Common Shares other than action described in this Section 5.1, which in the opinion of the Board would materially affect the rights of Debentureholders, the Conversion Price shall be adjusted in such manner and at such time, by action of the Board, subject to the prior written consent of any exchange on which the Common Shares are then listed as may be required, as the Board in its sole discretion may determine to be equitable in the circumstances. Failure of the Board to make such an adjustment shall be conclusive evidence that it has determined that it is equitable to make no adjustment in the circumstances.

(k) Subject to the prior written consent of any exchange on which the Common Shares are then listed, no adjustment in the Conversion Price shall be made in respect of any event described in Sections 5.1(a), 5.1(b), or 5.1(d) other than the events described in Section 5.1(a)(i) or (a)(ii) if the holders of the Debentures are entitled to participate in such event on the same terms mutatis mutandis as if they had converted their Debentures prior to the effective date or record date, as the case may be, of such event.

(l) Except as stated above in this Section 5.1, no adjustment will be made in the Conversion Price for any Debentures as a result of the issuance of Common Shares at less than the Current Market Price for such Common Shares on the date of issuance or the then applicable Conversion Price.

## **5.2 No Requirement to Issue Fractional Units**

The Corporation shall not be required to issue fractional Units upon the conversion of Debentures pursuant to this Indenture. The number of whole Units issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of such Debentures to be converted and the number of Units that will be issued will be the number of Units equal to the next lowest whole number of Units and no cash or other compensation will be paid in lieu of any fractional Unit.

## **5.3 Certificate as to Adjustment**

The Corporation shall from time to time immediately after the occurrence of any event which requires an adjustment or readjustment as provided in Section 5.1, deliver an Officers' Certificate to the Trustee specifying the nature of the event requiring the same and the amount of the adjustment necessitated thereby and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate and the amount of the adjustment specified therein shall be verified by an opinion of a firm of nationally recognized chartered accountants appointed by the Corporation and acceptable to the Trustee (who may be the Auditors of the Corporation) and shall be conclusive and binding on all parties in interest. When so approved, the Corporation shall, except in respect of any subdivision, redivision, reduction, combination or consolidation of the Common Shares, forthwith give notice to the Debentureholders in the manner provided in Section 11.2 specifying the event requiring such adjustment or readjustment and the results thereof, including the resulting Conversion Price; provided that, if the Corporation has given notice under this Section 5.3 covering all the relevant facts in respect of such event and if the Trustee approves, no such notice need be given under this Section 5.3. The Trustee shall rely, and shall be protected in so doing, upon the Officer's Certificate and opinion of chartered accountants appointed as above and any other document filed by the Corporation pursuant to this Article 5 for all purposes.

#### **5.4 Notice of Special Matters**

(a) The Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 11.2, of its intention to fix a record date for any event referred to in Sections 5.1(a), 5.1(b), or 5.1(d) (other than the subdivision, redivision, reduction, combination or consolidation of its Common Shares) which may give rise to an adjustment in the Conversion Price, and, in each case, such notice shall specify the particulars of such event and the record date and the effective date for such event; provided that the Corporation shall only be required to specify in such notice such particulars of such event as shall have been fixed and determined on the date on which such notice is given. Such notice shall be given not less than 10 days in each case prior to such applicable record date.

(b) In addition, the Corporation covenants with the Trustee that so long as any Debenture remains outstanding, it will give notice to the Trustee, and to the Debentureholders in the manner provided in Section 11.2, at least 20 days prior to the effective date of any transaction referred to in Section 5.1(d) stating the consideration into which the Debentures will be convertible after the effective date of such transaction.

#### **5.5 Protection of Trustee**

The Trustee:

(a) shall not at any time be under any duty or responsibility to any Debentureholder to determine whether any facts exist which may require any adjustment in the Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed in making the same;

(b) shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or Unit Securities or of any shares or other securities or property which may at any time be issued or delivered upon the conversion of any Debenture;

(c) shall not be responsible for any failure of the Corporation to make any cash payment or to issue, transfer or deliver Common Shares or Units upon the surrender of any Debenture for the purpose of conversion or redemption, or to comply with any of the covenants contained in this Article 5; and

(d) shall not incur any liability 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.

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

#### **6.1 To Pay Principal, and Interest**

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

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

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

## **6.3 Performance of Covenants by Trustee**

If the Corporation shall fail to perform any of its covenants contained in this Indenture, the Trustee may notify the Debentureholders of such failure on the part of the Corporation or may itself perform any of the covenants capable of being performed by it, but shall be under no obligation to do so or to notify the Debentureholders. All sums so expended or advanced by the Trustee shall be repayable as provided in Section 6.2. No such performance, expenditure or advance by the Trustee shall be deemed to relieve the Corporation of any default hereunder.

## **6.4 SEC Notice**

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

- (a) any class of its securities shall become registered pursuant to Section 12 of the U.S. Securities Exchange Act or the Corporation shall incur a reporting obligation pursuant to Section 15(d) of the U.S. Securities Exchange Act, or
- (b) any such registration or reporting obligation shall be terminated by the Corporation in accordance with the U.S. Securities Exchange Act,

the Corporation shall promptly deliver to the Trustee an Officers' Certificate (in a form provided by the Trustee) notifying the Trustee of such registration or termination and such other information as the Trustee may require at the time. The Corporation acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain requirements of the United States Securities and Exchange Commission with respect to those issuers who are required to complete securities filings under United States law.

## **ARTICLE 7 DEFAULT**

### **7.1 Events of Default**

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

- (a) If the Corporation fails to pay the Principal Amount or interest thereon when due hereunder;



- (b) if the Corporation defaults in observing or performing any material term, covenant or condition of this Debenture or any other document delivered hereunder or in connection with this Debenture, other than the payment of monies as provided for in subsection (a) hereof, on its part to be observed or performed;
- (c) if any of the Corporation's representations, warranties or other statements in this Debenture Indenture or any other document delivered pursuant hereto or in connection with this Debenture were at the time given false or misleading in any material respect;
- (d) if the Corporation ceases or threatens to cease to carry on business;
- (e) any order is made or an effective resolution is passed for the dissolution, liquidation or winding-up of the Corporation or other cancellation or suspension of the Corporation's incorporation or if a petition is filed for the winding-up of the Corporation, except to the extent that any of these are consented to by the Holder in writing;
- (f) the Corporation (i) commences any case, proceeding or other action under any existing or future debtor relief laws, the *Bankruptcy and Insolvency Act* (Canada), seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding Up Act* (Canada) or any other bankruptcy, insolvency or analogous law in Canada or the United States, seeking (A) to have an order for relief entered with respect to it, or (B) to adjudicate it as bankrupt or insolvent, or (C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debt, or (D) appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets or (ii) makes a general assignment for the benefit of its creditors;
- (g) there is commenced against the Corporation in a court of competent jurisdiction any case, proceeding or other action of a nature referred to in subsection (f) above which (i) results in the entry of an order for relief or any adjudication or appointment or (ii) has not been undismissed, undischarged, unstayed or unbonded for thirty (30) calendar days;
- (h) if a writ, execution or attachment or similar process is issued against all or a substantial portion of the property and assets of the Corporation as a result of a judgment against the Corporation in an amount which materially affects the assets of the Corporation and such writ, execution, attachment or similar process is not released, bonded, satisfied, discharged, vacated or stayed within twenty (20) Business Days after its levy, issue or entry;
- (i) any default by the Corporation under other material indebtedness after any applicable grace period has expired;
- (j) if a receiver, liquidator, trustee, sequestrator or other officer with like powers is appointed with respect to, or an encumbrancer pursuant to a Lien or otherwise takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over any of the material properties or assets of the Corporation or gives notice of its intention to do so;
- (k) if at any time there occurs an event or circumstance which, in the opinion of the Trustee, acting reasonably, represents a material adverse change in the business, operations, property or financial or other condition of the Corporation which would negatively affect the ability of the Corporation to perform

and discharge its obligations under this Indenture:

- (l) a receiver (including a receiver manager) of all or any part of the property or assets of the Company, or a trustee, liquidator, custodian or other official with similar powers is appointed in respect of the Corporation; or
- (m) the Corporation fails to perform or observe any other material covenant, term, condition or agreement relating to the Debentures or contained in any instrument or agreement evidencing or relating thereto.

## **7.2 Action if Event of Default**

In each and every Event of Default, the Trustee may, in its discretion, and shall, upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding, subject to the provisions of Section 7.4, by notice in writing to the Corporation declare the principal of and interest and premium, if any, on all Debentures then outstanding and all other monies outstanding hereunder to be due and payable and the same shall thereupon forthwith become immediately due and payable to the Trustee, and upon such amounts becoming due and payable, the Corporation shall forthwith pay to the Trustee for the benefit of the Debentureholders such principal, accrued and unpaid interest, and interest on amounts in default on such Debenture and all other monies outstanding hereunder, together with subsequent interest at the rate borne by the Debentures on such principal, interest, premium and such other monies from the date of such declaration or event until payment is received by the Trustee, such subsequent interest to be payable at the times and places and in the manner mentioned in and according to the tenor of the Debentures. Such payment when made shall be deemed to have been made in discharge of the Corporation's obligations hereunder and any monies so received by the Trustee shall be applied in the manner provided in Section 7.7.

In each and every Event of Default, the Corporation shall pay to the Agent on behalf of the Brokered Subscribers, or, in the case of Debentureholders who are not Brokered Subscribers, directly to the Debentureholders, respectively, interest on the unpaid interest at a rate of 10% from the date on which such event of default occurs.

## **7.3 Notice of Events of Default**

(a) If an Event of Default shall occur and be continuing, the Trustee shall, within 30 days after it receives written notice of the occurrence of such Event of Default, give notice of such Event of Default to the Debentureholders in the manner provided in Section 11.2, provided that, notwithstanding the foregoing, unless the Trustee shall have been requested to do so by the holders of at least 25% of the principal amount of the Debentures then outstanding, the Trustee shall not be required to give such notice if the Trustee in good faith shall have determined that the withholding of such notice is in the best interests of the Debentureholders and shall have so advised the Corporation in writing.

(b) The Trustee shall not be required to take notice of any Event of Default or to take any action with respect to such Event of Default involving any expense or liability, unless notice in writing of such Event of Default is formally given to the Trustee and unless it is indemnified and funded, in a manner satisfactory to it, against such expense or liability. The Trustee shall not be deemed to have notice of any Event of Default unless written notice of an Event of Default is received by the Trustee in accordance with this Indenture.

#### **7.4 Waiver of Default**

Upon the occurrence of any Event of Default hereunder:

- (a) the holders of the Debentures shall have the power (in addition to the powers exercisable by Extraordinary Resolution as hereinafter provided) by requisition in writing by the holders of more than 50% of the principal amount of Debentures then outstanding, to instruct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 7.1 and the Trustee shall thereupon waive the Event of Default and cancel such declaration, or either, upon such terms and conditions as shall be prescribed in such requisition; and
- (b) the Trustee, so long as it has not become bound to declare the principal and interest on the Debentures then outstanding to be due and payable, or to obtain or enforce payment of the same, shall have power to waive any Event of Default if, in the Trustee's opinion, the same shall have been cured or adequate satisfaction made therefor, and in such event to cancel any such declaration theretofore made by the Trustee in the exercise of its discretion, upon such terms and conditions as the Trustee may deem advisable.

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

#### **7.5 Enforcement by the Trustee**

- (a) Subject to the provisions of Section 7.4 and to the provisions of any Extraordinary Resolution that may be passed by the Debentureholders, if the Corporation shall fail to pay to the Trustee, forthwith after the same shall have been declared (or have been deemed to be declared) to be due and payable under Section 7.1, the principal of and interest on all Debentures then outstanding, together with any other amounts due hereunder, the Trustee may, in its discretion, and shall, upon receipt of a request in writing signed by the holders of not less than 25% in principal amount of the Debentures then outstanding (a "Holders' Enforcement Request"), and upon being funded and indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as trustee hereunder to obtain or enforce payment of such principal of and interest on all the Debentures then outstanding together with any other amounts due hereunder by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, or if the Trustee shall act without such request, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient.

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

Debentures or on behalf of the holders of the Debentures as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the holders of the Debentures themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such holders of the Debentures, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the holders of the Debentures against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims; provided, however, that subject to Section 7.4, nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Debentureholder.

(c) The Trustee shall also have the power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Debentureholders.

(d) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Debentures or the production thereof on the trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the holders of the Debentures subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Debentures, and it shall not be necessary to make any holders of the Debentures parties to any such proceeding.

(e) Notwithstanding any other provision of this Indenture, neither the Trustee nor any person related to the Trustee shall be appointed a receiver or receiver manager or liquidator of any part of the property or assets of the Corporation.

(f) No delay or omission of the Trustee or of the Debentureholders to exercise any remedy referred to in this section 7.5 shall impair any such remedy or shall be construed to be a waiver of any default hereunder or acquiescence thereto.

(g) The Corporation shall be liable to the Trustee for all costs incurred by the Debentureholders (including reasonable attorneys' fees and expenses) in connection with the enforcement of rights under this Indenture.

## **7.6 No Suits by Debentureholders**

No holder of any Debenture shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or interest on the Debentures or for the execution of any trust or power hereunder or for the appointment of a liquidator or Receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy hereunder, unless: (a) such holder shall previously have given to the Trustee written notice of the happening of an Event of Default hereunder; and (b) the Debentureholders by Extraordinary Resolution or by written

instrument signed by the holders of at least 66-2/3% in principal amount of the Debentures then outstanding shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted or to institute an action, suit or proceeding in its name for such purpose; and (c) the Debentureholders or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds and security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and (d) the Trustee shall have failed to act within a reasonable time after such notification, request, receipt of sufficient funds, security and offer of indemnity and such notification, request, receipt of sufficient funds, security and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to any such proceeding or for any other remedy hereunder by or on behalf of the holder of any Debentures.

### **7.7 Application of Monies by Trustee**

Except as herein otherwise expressly provided, any monies received by the Trustee from the Corporation pursuant to the foregoing provisions of this Article 7, or as a result of legal or other proceedings or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with any other monies in the hands of the Trustee available for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee and/or the Receiver of its compensation, costs, charges, expenses, borrowings, advances or other monies furnished or provided by or at the instance of the Trustee or the Receiver in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, but subject as hereinafter in this Section 7.7 provided, in payment, rateably and proportionately to the holders of Debentures, of the principal of and accrued and unpaid interest and interest on amounts in default on the Debentures which shall then be outstanding in the priority of principal first and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by Extraordinary Resolution and in that case in such order or priority as between principal, and interest as may be directed by such resolution; and
- (c) third, in payment of the surplus, if any, of such monies to the Corporation or its assigns;
- (d) provided, however, that no payment shall be made pursuant to clause (c) above in respect of the principal or interest on any Debenture held, directly or indirectly, by or for the benefit of the Corporation (other than any Debenture pledged for value and in good faith to a Person other than the Corporation or any Subsidiary but only to the extent of such Person's interest therein) except subject to the prior payment in full of the principal, and interest (if any) on all Debentures which are not so held. The Trustee shall assume no such interest of the Corporation as aforesaid, until Trustee has received Officer's Certificate confirming such interest.

### **7.8 Notice of Payment by Trustee**

Not less than 15 days' notice shall be given in the manner provided in Section 11.2 by the Trustee to the Debentureholders of any payment to be made under this Article 7. Such notice shall state the time when and place where such payment is to be made and also the liability under this Indenture to which it is to be applied. After the day so fixed, unless payment shall have been duly demanded and have been refused, the Debentureholders will be entitled to interest only on the balance (if any) of the principal

monies, and interest due (if any) to them, respectively, on the Debentures, after deduction of the respective amounts payable in respect thereof on the day so fixed.

**7.9 Trustee May Demand Production of Debentures**

The Trustee shall have the right to demand production of the Debentures in respect of which any payment of principal, interest or premium required by this Article 7 is made and may cause to be endorsed on the same a memorandum of the amount so paid and the date of payment, but the Trustee may, in its discretion, dispense with such production and endorsement, upon such indemnity being given to it and to the Corporation and such surety bond being posted, as the Trustee shall deem sufficient.

**7.10 Remedies Cumulative**

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

**7.11 Judgment Against the Corporation**

The Corporation covenants and agrees with the Trustee that, in case of any judicial or other proceedings to enforce the rights of the Debentureholders, judgment may be rendered against it in favour of the Debentureholders or in favour of the Trustee as trustee for the Debentureholders for any amount which may remain due in respect of the Debentures and the interest thereon and any other monies owing hereunder.

**7.12 Immunity of Directors, Officers and Others**

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

**ARTICLE 8 SATISFACTION AND DISCHARGE**

**8.1 Cancellation and Destruction**

All Debentures shall forthwith after payment thereof be delivered to the Trustee and cancelled by it. All Debentures cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee and, if required by the Corporation, the Trustee shall furnish to it a destruction certificate setting out the designating numbers of the Debentures so destroyed.

## **8.2 Non-Presentation of Debentures**

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

- (a) the Corporation shall be entitled to pay or deliver to the Trustee and direct it to set aside; or
- (b) in respect of monies or Units in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Corporation shall be entitled to direct the Trustee to set aside; or
- (c) if the redemption was pursuant to notice given by the Trustee, the Trustee may itself set aside, the principal, or the interest, as the case may be, in trust to be paid to the holder of such Debenture upon due presentation or surrender thereof in accordance with the provisions of this Indenture; and thereupon the principal of, or the interest payable on or represented by each Debenture in respect whereof such monies have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving delivery and payment of the monies so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 8.3.

## **8.3 Repayment of Unclaimed Monies**

Subject to applicable law, any monies set aside under Section 8.2 and not claimed by and paid to holders of Debentures as provided in Section 8.2 within three years after the date of such setting aside shall be repaid and delivered to the Corporation by the Trustee and thereupon the Trustee shall be released from all further liability with respect to such monies and thereafter the holders of the Debentures in respect of which such monies were so repaid to the Corporation shall have no rights in respect thereof except to obtain payment and delivery of the monies from the Corporation subject to any limitation provided by the laws of the Province of Ontario.

## **8.4 Discharge**

The Trustee shall at the written request of the Corporation release and discharge this Indenture and execute and deliver such instruments as it shall be advised by Counsel are requisite for that purpose and to release the Corporation from its covenants herein contained (other than the provisions relating to the indemnification of the Trustee), upon proof being given to the reasonable satisfaction of the Trustee that the principal of, and interest (including interest on amounts in default, if any), on all the Debentures and all other monies payable hereunder have been paid, satisfied or delivered or that all the Debentures having matured or having been duly called for redemption, payment of the principal of and interest (including interest on amounts in default, if any) on such Debentures and of all other monies payable hereunder has been duly and effectually provided for in accordance with the provisions hereof.

## **8.5 Satisfaction**

The Corporation shall be deemed to have fully paid, satisfied and discharged all of the outstanding Debentures and the Trustee, at the expense of the Corporation, shall execute and deliver proper instruments acknowledging the full payment, satisfaction and discharge of such Debentures, when, with

respect to all of the outstanding Debentures:

(a) the Corporation has deposited or caused to be deposited with the Trustee as trust funds or property in trust for the purpose of making payment on such Debentures sufficient to pay, satisfy and discharge the entire amount of principal of, and interest, if any, to maturity, or any repayment date or Redemption Date, or upon conversion or otherwise as the case may be, of such Debentures;

(b) the Corporation has deposited or caused to be deposited with the Trustee as trust funds or property in trust for the purpose of making payment on such Debentures: such amount in Canadian dollars of direct obligations of, or obligations the principal and interest of which are guaranteed by, the Government of Canada; or as will, together with the income to accrue thereon and reinvestment thereof, be sufficient to pay and discharge the entire amount of principal of, premium, if any, and accrued and unpaid interest to maturity or any repayment date, as the case may be, of all such Debentures; or

(c) all Debentures authenticated and delivered (other than (A) Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.6 and (B) Debentures for which payment has been deposited in trust and thereafter repaid to the Corporation as provided in Section 8.3) have been delivered to the Trustee for cancellation;

so long as in any such event:

(d) the Corporation has paid, caused to be paid or made provisions to the satisfaction of the Trustee for the payment of all other sums payable or which may be payable with respect to all of such Debentures (together with all applicable expenses of the Trustee in connection with the payment of such Debentures) and all amounts due to the Trustee under Sections 6.2 and 12.15; and

(e) the Corporation has delivered to the Trustee an Officers' Certificate stating that all conditions precedent herein provided relating to the payment, satisfaction and discharge of all such Debentures have been complied with.

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

(g) Upon the satisfaction of the conditions set forth in this Section 8.5 with respect to all the outstanding Debentures, the terms and conditions of the Debentures, including the terms and conditions with respect thereto set forth in this Indenture (other than those contained in Article 2 and Article 8 and the provisions of Article 1 pertaining to Article 2 and Sections 6.2 and 12.15), shall no longer be binding upon or applicable to the Corporation.

(h) If the Trustee is unable to apply any money or securities in accordance with this Section 8.5 by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Corporation's obligations under this Indenture and the affected Debentures shall be revived and reinstated as though no money or securities had been deposited pursuant to this Section 8.5 until such time as the Trustee is permitted to apply all such money or securities in accordance with this Section 8.5, provided that if the Corporation has made any payment in respect of principal of, or interest on Debentures or, as applicable, other amounts because of the



reinstatement of its obligations, the Corporation shall be subrogated to the rights of the holders of such Debentures to receive such payment from the money or securities held by the Trustee.

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

(a) Where trust funds or trust property have been deposited pursuant to Section 8.5, the holders of Debentures and the Corporation shall continue to have and be subject to their respective rights, duties and obligations under Article 2.

(b) In the event that, after the deposit of trust funds or trust property pursuant to Section 8.5 in respect of the Debentures (the “**Defeased Debentures**”), the Corporation or any holder of any of the Defeased Debentures from time to time converts its Debentures to Units either in accordance with the terms of the Debenture or by way of agreement between the Corporation and the holder of the Defeased Debenture, the Trustee shall, upon receipt of a Written Direction of the Corporation, return to the Corporation from time to time the proportionate amount of the trust funds or other trust property deposited with the Trustee pursuant to Section 8.5 in respect of the Defeased Debentures which is applicable to the Defeased Debentures so converted (which amount shall be based on the applicable principal amount of the Defeased Debentures being converted in relation to the aggregate outstanding principal amount of all the Defeased Debentures).

### **ARTICLE 9 SUCCESSORS**

#### **9.1 Corporation may Consolidate, Etc., Only on Certain Terms**

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

(i) the Person formed by such consolidation or into which the Corporation is amalgamated or merged, or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the properties and assets of the Corporation, is a corporation, organized and existing under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof and such corporation (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, as required on the advice of Counsel, the obligations of the Corporation under the Debentures and this Indenture and the performance or observance of every covenant and provision of this Indenture and the Debentures required on the part of the Corporation to be performed or observed and the conversion rights shall be provided for in accordance with Article 5, by supplemental indenture satisfactory in form to the Trustee, as required on the advice of Counsel, executed and delivered to the Trustee, by the Person (if other than the Corporation or the continuing corporation resulting from the amalgamation of the Corporation with another corporation under the laws of Canada or any province or territory thereof) formed by such consolidation or into which the Corporation shall have been merged or by the Person which shall have acquired the Corporation’s assets;

(ii) after giving effect to such transaction, no Event of Default, and no event which, after

notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(iii) if the Corporation or the continuing corporation resulting from the amalgamation or merger of the Corporation with another Person under the laws of Canada or any province or territory thereof or the laws of the United States or any state thereof will not be the resulting, continuing or surviving corporation, the Corporation shall have, at or prior to the effective date of such consolidation, amalgamation, merger or sale, conveyance, transfer or lease, delivered to the Trustee an Officers' Certificate and an opinion of Counsel, each stating that such consolidation, merger or transfer complies with this Article 9 and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article 9, and that all conditions precedent herein provided for relating to such transaction have been complied with.

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

## **9.2 Successor Substituted**

Upon any consolidation of the Corporation or the Trustee with, or amalgamation or merger of the Corporation or the Trustee into, any other Person, or any sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Corporation and its Subsidiaries, taken as a whole, in accordance with Section 9.1, the successor Person formed by such consolidation or into which the Corporation or the Trustee is amalgamated or merged or to which such sale, conveyance, transfer or lease is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Corporation or the Trustee, as the case may be, under this Indenture with the same effect as if such successor Person had been named as the Corporation or the Trustee, as the case may be, herein, and thereafter, except in the case of a lease, and except for obligations the predecessor Person may have under a supplemental indenture entered into pursuant to Section 9.1(a)(iii), the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debentures.

## **ARTICLE 10 MEETINGS OF DEBENTUREHOLDERS**

### **10.1 Right to Convene Meeting**

The Trustee or the Corporation may at any time and from time to time, and the Trustee shall, on receipt of a Written Direction of the Corporation or a written request signed by the holders of not less than 25% of the principal amount of the Debentures then outstanding, and upon receiving funding and being indemnified to its reasonable satisfaction by the Corporation or by the Debentureholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Debentureholders. In the event of the Trustee failing, within 30 days after receipt of any such request and such funding of indemnity, to give notice convening a meeting, the Corporation or such Debentureholders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Vancouver, British Columbia, or at such other place as may be approved or determined by the Trustee. Any meeting held pursuant to this Article 10 may be done through a virtual

or electronic meeting platform.

## **10.2 Notice of Meetings**

At least 21 days' notice of any meeting shall be given to the Debentureholders in the manner provided in Section 11.2 and a copy of such notice shall be sent by post to the Trustee, unless the meeting has been called by it. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article. The accidental omission to give notice of a meeting to any holder of Debentures shall not invalidate any resolution passed at any such meeting. A holder may waive notice of a meeting either before or after the meeting.

## **10.3 Chairman**

Some individual, who need not be a Debentureholder, nominated in writing by the Trustee shall be chairman of the meeting and if no individual is so nominated, or if the individual so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, a majority of the Debentureholders present in person or by proxy shall choose some individual present to be chairman.

## **10.4 Quorum**

Subject to the provisions of Section 10.12, at any meeting of the Debentureholders a quorum shall consist of Debentureholders present in person or by proxy and representing at least 25% in principal amount of the outstanding Debentures. If a quorum of the Debentureholders shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting, if summoned by the Debentureholders or pursuant to a request of the Debentureholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the Debentureholders present in person or by proxy shall, subject to the provisions of Section 10.12, constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the principal amount of the outstanding Debentures. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum is present at the commencement of business.

## **10.5 Power to Adjourn**

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

## **10.6 Show of Hands**

Every question submitted to a meeting shall, subject to Section 10.7, be decided in the first place

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

#### **10.7 Poll**

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

#### **10.8 Voting**

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

#### **10.9 Proxies**

A Debentureholder may be present and vote at any meeting of Debentureholders by an authorized representative. The Corporation (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Debentureholders to be present and vote at any meeting without producing their Debentures, and of enabling them to be present and vote at any such meeting by proxy and of lodging instruments appointing such proxies at some place other than the place where the meeting is to be held, may from time to time make and vary such regulations as it shall think fit providing for and governing any or all of the following matters:

- (a) the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and the production of the authority of any Person signing on behalf of a Debentureholder;
- (b) the deposit of instruments appointing proxies at such place as the Trustee, the Corporation or the Debentureholder 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; and

(c) 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, faxed, cabled, telegraphed or sent by other electronic means before the meeting to the Corporation or to the Trustee 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.

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

#### **10.10 Persons Entitled to Attend Meetings**

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

#### **10.11 Powers Exercisable by Extraordinary Resolution**

In addition to the powers conferred upon them by any other provisions of this Indenture or by law, a meeting of the Debentureholders shall have the following powers exercisable from time to time by Extraordinary Resolution, subject in the case of the matters in paragraphs (a), (b), (c), (d) and (1) to receipt of the prior approval of any exchange on which the Debentures are then listed:

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

(b) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Debentureholders or the Trustee against the Corporation, or against its property, whether such rights arise under this Indenture or the Debentures or otherwise;

(c) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture or any Debenture which shall be agreed to by the Corporation and consented to by the Trustee, relying on an opinion of Counsel, such consent not to be unreasonably withheld, to authorize the Trustee to concur in and execute any indenture supplemental hereto embodying any modification, change, addition or omission, and to consent to the assignment by the Corporation of its rights or obligations pursuant to any Security Document;

(d) power to sanction any scheme for the reconstruction, reorganization or recapitalization of the Corporation or for the consolidation, amalgamation, arrangement, combination or merger of the Corporation with any other Person, or for the sale, leasing, transfer or other disposition of all or substantially all of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if the provisions of Section 9.1

shall have been complied with;

(e) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;

(f) power to waive, and direct the Trustee to waive, any default hereunder and/or cancel any declaration made by the Trustee pursuant to Section 7.1 either unconditionally or upon any condition specified in such Extraordinary Resolution;

(g) power to restrain any Debentureholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal, premium or interest on the Debentures, or for the execution of any trust or power hereunder;

(h) power to direct any Debentureholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have been permitted by Section 7.6, of the costs, charges and expenses reasonably and properly incurred by such Debentureholder in connection therewith;

(i) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other securities of the Corporation;

(j) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Debentureholders, such of the powers of the Debentureholders as are exercisable by Extraordinary Resolution or other resolution as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of individuals as shall be prescribed in the resolution appointing it and the members need not be themselves Debentureholders. Every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Debentureholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

(k) power to remove the Trustee from office and to appoint a new Trustee or Trustees provided that no such removal shall be effective unless and until a new Trustee or Trustees shall have become bound by this Indenture;

(l) power to sanction the exchange of the Debentures for, or the conversion thereof into, shares, bonds, debentures or other securities or obligations of the Corporation or of any other Person formed or to be formed;

(m) power to authorize the distribution in specie of any shares or securities received pursuant to a transaction authorized under the provisions of Section 10.11(l); and

(n) power to amend, alter or repeal any Extraordinary Resolution previously passed or sanctioned by the Debentureholders or by any committee appointed pursuant to Section 10.11(j).

Except as otherwise provided in this Indenture, all other powers of and matters to be determined by the Debentureholders may be exercised or determined from time to time by Ordinary Resolution based on the opinion of Counsel.

The expression “**Ordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an ordinary resolution at a meeting of Debentureholders duly convened for the purpose and held in accordance with the provisions of this Article 10 at which a quorum of the Debentureholders is present and passed by the affirmative votes of Debentureholders present in person or represented by proxy at the meeting who hold more than 50% of the principal amount of the Debentures voted in respect of such resolution.

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

(a) The expression “Extraordinary Resolution” when used in this Indenture means, subject as hereinafter in this Article 10 provided, a resolution proposed to be passed as an Extraordinary Resolution at a meeting of Debentureholders (including an adjourned meeting) duly convened for the purpose and held in accordance with the provisions of this Article at which the holders of not less than 25% of the principal amount of the Debentures then outstanding are present in person or by proxy and passed by the favourable votes of the holders of not less than 66-2/3% of the principal amount of the Debentures present or represented by proxy at the meeting and voted upon on a poll on such resolution.

(b) If, at any such meeting, the holders of not less than 25% of the principal amount of the Debentures then outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Debentureholders, shall be dissolved but in any other case it shall stand adjourned to such date, being not less than 14 nor more than 60 days later, and to such place and time as may be appointed by the chairman. Not less than 10 days’ notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 11.2. Such notice shall state that at the adjourned meeting the Debentureholders present in person or by proxy shall form a quorum. At the adjourned meeting the Debentureholders 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 thereat by the affirmative vote of holders of not less than 66-2/3% of the principal amount of the Debentures present or represented by proxy at the meeting voted upon on a poll shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the holders of not less than 25% in principal amount of the Debentures then outstanding 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.

#### **10.13 Powers Cumulative**

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

Debentureholders to exercise the same or any other such power or powers thereafter from time to time.

#### **10.14 Minutes**

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

#### **10.15 Instruments in Writing**

All actions which may be taken and all powers that may be exercised by the Debentureholders at a meeting held as hereinbefore in this Article 10 provided may also be taken and exercised by the holders of 66-2/3% of the principal amount of all the outstanding Debentures 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.

#### **10.16 Binding Effect of Resolutions**

Every resolution and every Extraordinary Resolution passed in accordance with the provisions of this Article 10 at a meeting of Debentureholders shall be binding upon all the Debentureholders, whether present at or absent from such meeting, and every instrument in writing signed by Debentureholders in accordance with Section 10.15 shall be binding upon all the Debentureholders, whether signatories thereto or not, and each and every Debentureholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

#### **10.17 Evidence of Rights Of Debentureholders**

- (a) Any request, direction, notice, consent or other instrument which this Indenture may require or permit to be signed or executed by the Debentureholders may be in any number of concurrent instruments of similar tenor signed or executed by such Debentureholders.
- (b) The Trustee may, in its discretion, require proof of execution in cases where it deems proof desirable and may accept such proof as it shall consider proper.

### **ARTICLE 11 NOTICES**

#### **11.1 Notice to Corporation**

Any notice to the Corporation under the provisions of this Indenture shall be valid and effective if delivered to the Corporation at: Hybrid Power Solutions Inc., Email: [email redacted]; Attention: Alex McAulay, CFO, and a copy delivered to Morton Law LLP, Email: [email redacted], Attention: Ryan Gill, or if given by registered letter, postage prepaid, to such offices and so addressed and if mailed, shall be



deemed to have been effectively given three days following the mailing thereof or, if transmitted by electronic transmission, shall be deemed given the day of transmission, or if such day is not a Business Day, on the first Business Day following the day of transmission, provided that such notice delivered by e-mail is delivered before 4:00 p.m. (Vancouver time) on such Business Day. The Corporation may from time to time notify the Trustee in writing of a change of address which thereafter, until changed by like notice, shall be the address of the Corporation for all purposes of this Indenture.

### **11.2 Notice to Debentureholders**

(a) All notices to be given hereunder with respect to the Debentures shall be deemed to be validly given to the holders thereof if sent by first class mail, postage prepaid, by letter or circular addressed to such holders at their post office addresses appearing in any of the registers hereinbefore mentioned and shall be deemed to have been effectively given three days following the day of mailing. Accidental error or omission in giving notice or accidental failure to mail notice to any Debentureholder or the inability of the Corporation to give or mail any notice due to anything beyond the reasonable control of the Corporation shall not invalidate any action or proceeding founded thereon.

(b) If any notice given in accordance with the foregoing paragraph would be unlikely to reach the Debentureholder to whom it is addressed in the ordinary course of post by reason of an interruption in mail service, whether at the place of dispatch or receipt or both, the Corporation shall give such notice by publication at least once in the City of Vancouver, British Columbia, with each such publication to be made in a daily newspaper of general circulation in the City of Vancouver, British Columbia.

(c) Any notice given to Debentureholders by publication shall be deemed to have been given on the day on which publication shall have been effected at least once in each of the newspapers in which publication was required.

(d) All notices with respect to any Debenture may be given to whichever one of the holders thereof (if more than one) is named first in the registers hereinbefore mentioned, and any notice so given shall be sufficient notice to all holders of any Persons interested in such Debenture.

### **11.3 Notice to Trustee**

Any notice to the Trustee under the provisions of this Indenture shall be valid and effective if delivered to the Trustee at: 1230, 300 5<sup>th</sup> Avenue SW, Calgary, Alberta, Canada, T2P 3C4, Attention: VP, Corporate Trust, Email: [corptrust@odysseytrust.com](mailto:corptrust@odysseytrust.com), or if given by registered letter, postage prepaid, to such office and so addressed and, if mailed, shall be deemed to have been effectively given three days following the mailing thereof or, if transmitted by email transmission, shall be deemed given the day of transmission, or if such day is not a Business Day, on the first Business Day following the day of transmission, provided that such notice delivered by email is delivered before 4:00 p.m. (Toronto time) on such Business Day.

### **11.4 Mail Service Interruption**

If by reason of any interruption of mail service, actual or threatened, any notice to be given to the Trustee would reasonably be unlikely to reach its destination by the time notice by mail is deemed to have been given pursuant to Section 11.3, such notice shall be valid and effective only if delivered at the appropriate address in accordance with Section 11.3.

**ARTICLE 12 CONCERNING THE TRUSTEE****12.1 No Conflict of Interest**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture, to the best of its knowledge, there exists no material conflict of interest between the role of the Trustee as a fiduciary hereunder and its role in any other capacity but if, notwithstanding the provisions of this Section 12.1, such a material conflict of interest exists, or hereafter arises, the validity and enforceability of this Indenture, and the Debentures issued hereunder, shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists or arises but the Trustee shall, within 30 days after ascertaining that it has a material conflict of interest, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Section 12.2.

**12.2 Replacement of Trustee**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to the Corporation 90 days' notice in writing or such shorter notice as the Corporation may accept as sufficient. If at any time a material conflict of interest exists in the Trustee's role as a fiduciary hereunder the Trustee shall, within 30 days after ascertaining that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in this Section 12.2. The validity and enforceability of this Indenture and of the Debentures issued hereunder shall not be affected in any manner whatsoever by reason only that such a material conflict of interest exists. In the event of the Trustee resigning or being removed or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new Trustee unless a new Trustee has already been appointed by the Debentureholders. Failing such appointment by the Corporation, the retiring Trustee or any Debentureholder may apply to a court in Ontario, on such notice as such court may direct at the Corporation's expense, for the appointment of a new Trustee but any new Trustee so appointed by the Corporation or by the court shall be subject to removal as aforesaid by the Debentureholders and the appointment of such new Trustee shall be effective only upon such new Trustee becoming bound by this Indenture. Any new Trustee appointed under any provision of this Section 12.2 shall be a corporation authorized to carry on the business of a trust company in one or more of the provinces of Canada. On any new appointment, the new Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee.

Any company into which the Trustee may be merged or, with or to which it may be consolidated, amalgamated or sold, or any company resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party, shall be the successor trustee under this Indenture without the execution of any instrument or any further act. Nevertheless, upon the written request of the successor Trustee or of the Corporation, the Trustee ceasing to act shall, upon payment of all amounts due to the Trustee under Section 12.15, execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the successor Trustee so appointed in its place.

Should any deed, conveyance or instrument in writing from the Corporation be required by any new Trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights,

powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by the Corporation.

### **12.3 Duties of Trustee**

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

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

In the exercise of its rights, duties and obligations hereunder, the Trustee may, if acting in good faith, rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports or certificates furnished pursuant to any covenant, condition or requirement of this Indenture or required by the Trustee to be furnished to it in the exercise of its rights and duties hereunder, if the Trustee examines such statutory declarations, opinions, reports or certificates and determines that they comply with Section 12.5, if applicable, and with any other applicable requirements of this Indenture. The Trustee may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. Without restricting the foregoing, the Trustee may rely on an opinion of Counsel satisfactory to the Trustee notwithstanding that it is delivered by a solicitor or firm which acts as solicitors for the Corporation.

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

The Corporation shall furnish to the Trustee evidence of compliance with the conditions precedent provided for in this Indenture relating to any action or step required or permitted to be taken by the Corporation or the Trustee under this Indenture or as a result of any obligation imposed under this Indenture, including without limitation, the certification and delivery of Debentures hereunder, the satisfaction and discharge of this Indenture and the taking of any other action to be taken by the Trustee at the request of or on the application of the Corporation, forthwith if and when (a) such evidence is required by any other Section of this Indenture to be furnished to the Trustee in accordance with the terms of this Section 12.5, or (b) written notice is given requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of:

- (a) a certificate made by any two officers or directors of the Corporation, stating that any such condition precedent has been complied with in accordance with the terms of this Indenture;
- (b) in the case of a condition precedent compliance with which is, by the terms of this Indenture, made subject to review or examination by a solicitor, an opinion of Counsel that such condition precedent has been complied with in accordance with the terms of this Indenture; and
- (c) in the case of any such condition precedent compliance with which is subject to review or examination by auditors or accountants, an opinion or report of the Auditors of the Corporation whom the Trustee for such purposes hereby approves, that such condition precedent has been complied with in

accordance with the terms of this Indenture.

Whenever such evidence relates to a matter other than the certificates and delivery of Debentures and the satisfaction and discharge of this Indenture, and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, engineer or appraiser or any other Person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a trustee, officer or employee of the Corporation, it shall be in the form of a statutory declaration. Such evidence shall be, so far as appropriate, in accordance with the immediately preceding paragraph of this Section 12.5.

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

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

#### **12.6 Officers' Certificates Evidence**

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

#### **12.7 Experts, Advisers and Agents**

(a) The Trustee may employ or retain and act and rely on the opinion or advice of or information obtained from any solicitor, auditor, valuer, engineer, surveyor, appraiser or other expert, whether obtained by the Trustee or by the Corporation, or otherwise, and shall not be liable for acting, or refusing to act, in good faith on any such opinion or advice and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid; and

(b) employ such agents and other assistants as it may reasonably require for the proper discharge of its duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts

hereof and compensation for all disbursements, costs and expenses made or incurred by it in the discharge of its duties hereunder and in the management of the trusts hereof, and any solicitors employed or consulted by the Trustee may, but need not be, solicitors for the Corporation.

### **12.8 Trustee May Deal in Debentures**

Subject to Sections 12.1 and 12.3, the Trustee may, in its personal or other capacity, buy, sell, lend upon and deal in the Debentures and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

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

Unless otherwise provided in this Indenture, until released in accordance with this Indenture, monies held by Trustee shall be kept segregated in the records of the Trustee and shall be deposited in one or more interest-bearing trust accounts to be maintained by the Trustee in the name of the Trustee at one or more banks having a Standard and Poors Issuer Credit rating of AA- or above (an "**Approved Bank**"). All amounts held by the Trustee pursuant to this Indenture shall be held by the Trustee pursuant to the term of this Indenture and shall not give rise to a debtor-creditor or other similar relationship. Alternatively monies held by the Trustee, under the trusts of this Indenture, may be invested and reinvested in the name or under the control of the Trustee in securities in which, under the laws of the Province of Ontario, trustees are authorized to invest trust monies, provided that such securities are expressed to mature within two years or such shorter period selected to facilitate any payments expected to be made under this Indenture, after their purchase by the Trustee, and unless and until the Trustee shall have declared the principal of and interest on the Debentures to be due and payable, the Trustee shall so invest such monies at the Written Direction of the Corporation given in a reasonably timely manner. The amounts held by the Trustee pursuant to this Indenture or invested are at the sole risk of Corporation and, without limiting the generality of the foregoing, the Trustee shall have no responsibility or liability for any diminution of the monies which may result from any deposit made with an Approved Bank or invested pursuant to this Section 12.9, including any losses resulting from a default by the Approved Bank or other credit losses (whether or not resulting from such a default) and any credit or other losses on any deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Trustee will have acted prudently in depositing the monies at any Approved Bank. Pending instructions to invest any monies as hereinbefore provided, such monies may be deposited in the name of the Trustee in any Approved Bank with interest payable at the usual rate of interest provided by the Trustee, if any, then current on similar deposits.

### **12.10 Trustee Not Ordinarily Bound**

Except as provided in Section 7.3 and as otherwise specifically provided herein, the Trustee shall not, subject to Section 12.3, 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, nor in any way to supervise or interfere with the conduct of the Corporation's business, unless the Trustee shall have been required to do so in writing by the holders of not less than 25% of the aggregate principal amount of the Debentures then outstanding or by any Extraordinary Resolution of the Debentureholders passed in accordance with the provisions contained in Article 10, and then only after it shall have been funded and indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages and expenses which it may

incur by so doing.

**12.11 Trustee Not Required to Give Security**

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

**12.12 Trustee Not Bound to Act on Corporation's Request**

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

**12.13 Conditions Precedent to Trustee's Obligations to Act Hereunder**

The obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee and of the Debentureholders hereunder shall be conditional upon the Debentureholders furnishing when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.

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

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

**12.14 Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces of Alberta and British Columbia but if, notwithstanding the provisions of this Section 12.14, it ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the securities issued hereunder shall not be affected in any manner whatsoever by reason only of such event but the Trustee shall, within 90 days after ceasing to be authorized to carry on the business of a trust company in any of the provinces of Canada, either become so authorized or resign in the manner and with the effect specified in Section 12.2.

**12.15 Compensation and Indemnity**

(a) The Corporation shall pay to the Trustee from time to time compensation for its services hereunder as agreed separately by the Corporation and the Trustee, and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of its duties under this Indenture (including the reasonable

and documented compensation and disbursements of its Counsel and all other advisers and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under this Indenture shall be finally and fully performed. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust.

(b) The Corporation hereby indemnifies and saves harmless the Trustee and its directors, officers and employees from and against any and all loss, damages, charges, expenses, claims, demands, actions or liability whatsoever which may be brought against the Trustee or which it may suffer or incur as a result of or arising out of the performance of its duties and obligations hereunder, save only in the event of the gross negligence, wilful misconduct or fraud of the Trustee. This indemnity will survive the termination or discharge of this Indenture and the resignation or removal of the Trustee. The Trustee shall notify the Corporation promptly of any claim for which it may seek indemnity. The Corporation shall defend the claim and the Trustee shall co-operate in the defence. The Trustee may have separate Counsel and the Corporation shall pay the reasonable fees and expenses of such Counsel. The Corporation need not pay for any settlement made without its consent, which consent must not be unreasonably withheld. This indemnity shall survive the resignation or removal of the Trustee or the discharge of this Indenture. Without limiting the generality of the foregoing and for greater certainty, the indemnity provided by the Corporation in favour of the Trustee pursuant to this Section 12.15(b) includes an indemnity in respect of any interest payments that are required to be made to non-residents of Canada pursuant to Section 2.11.

(c) The Corporation need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through gross negligence, wilful misconduct or fraud.

(d) Notwithstanding any other provision of this Indenture, and whether such losses or damages are foreseeable or unforeseeable, the Trustee shall not be liable under any circumstances whatsoever for any:

(i) breach by any other Party of securities law or other rule of any securities regulatory authority;

(ii) lost profits; or

(iii) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages of any Person.

(e) Any liability of the Trustee shall be limited to direct damages which in the aggregate shall not exceed the amount of fees paid by the Corporation under this Indenture in the twelve months immediately prior to the Trustee receiving the first notice of the claim.

#### **12.16 Acceptance of Trust**

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

**12.17 Third Party Interests**

The Corporation hereby represents to the Trustee that any account to be opened by, or interest to held by, the Trustee in connection with this Indenture, for or to the credit of the Corporation, 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 the Corporation hereby agrees to complete, execute and deliver forthwith to the Trustee a declaration, in the Trustee's prescribed form or in such other form as may be satisfactory to it, as to the particulars of such third party.

**12.18 Privacy Laws**

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

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

Each Party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Indenture for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Trustee shall make available on its website, [www.odysseytrust.com](http://www.odysseytrust.com), or upon request, including revisions thereto. The Trustee may transfer some of that personal information to Persons in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides. Further, each Party agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a Party unless that Party has assured itself that such individual understands and has consented to the aforementioned uses and discloses.

**12.19 Force Majeure**

Neither the Trustee nor the Corporation shall be liable to the other, or held in breach of this Indenture, if prevented, hindered or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, pandemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 12.19.



**12.20 Anti-Money Laundering**

The Corporation hereby represents to the Trustee that any account to be opened by, or interest to be held by the Trustee in connection with this Indenture, for or to the credit of such 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 Trustee's prescribed form as to the particulars of such third party.

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment and acting reasonably, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulations or guidelines. Further, should the Trustee, in its sole judgment and acting reasonably, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulations or guidelines, then it shall have the right to resign on 10 days' prior written notice sent to the Corporation or any shorter period of time as agreed to by the Corporation, provided that:

- (a) the Trustee's written notice shall describe the circumstances of such non-compliance; and
- (b) if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

**12.21 Withholding Obligations**

For greater certainty, the Trustee shall, as directed by the Corporation, withhold, from any payment made to a Debentureholder pursuant to the terms of this Indenture, the amount of any applicable withholding taxes required to be withheld in respect of such payment, and the Trustee shall remit such withheld amounts to the appropriate governmental authority, as and when directed by the Corporation. For the purposes of determining the appropriate withholdings to be made from any payment to be made to a Debentureholder, the Corporation and the Trustee agree to co-operate and to provide each other with any relevant information they have with respect to the Debentureholders.

**12.22 Concerning the Trustee**

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

- (a) the Trustee shall not be liable for or by reason of any statement of fact or recitals in this Indenture or in the Debentures or be required to verify the same, but all such statements or recitals are and shall be deemed to be made by the Corporation;
- (b) the Trustee shall not be bound to give notice to any person of the execution hereof; and
- (c) the Trustee shall not incur any liability or responsibility whatsoever or be in any way responsible for the consequence of any breach on the part of the Corporation of any of the covenants herein contained or of any acts of the agents or servants of the Corporation.

The Trustee will disburse monies according to this Indenture only to the extent that monies have been deposited with it.

The Trustee shall not be responsible for ensuring that the proceeds of any offering of Debentures are used in the manner contemplated by the offering documents.

## **ARTICLE 13 SUPPLEMENTAL INDENTURES**

### **13.1 Supplemental Indentures**

From time to time the Trustee and, when authorized by a resolution of the directors of Corporation, the Corporation, may, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers deeds or indentures supplemental hereto which thereafter shall form part hereof, for any one or more of the following purposes, in each case, subject to the approval of the CSE, if required:

- (a) adding to the covenants of the Corporation herein contained for the protection of the Debentureholders or providing for events of default, in addition to those herein specified;
- (b) making such provisions not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Debentures which do not affect the substance thereof and which in the opinion of the Trustee relying on an opinion of Counsel will not be prejudicial to the interests of the Debentureholders;
- (c) evidencing the succession, or successive successions, of others to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;
- (d) giving effect to any Extraordinary Resolution passed as provided in Article 10; and
- (e) for any other purpose not inconsistent with the terms of this Indenture.

Unless the supplemental indenture requires the consent or concurrence of the Debentureholders, by Extraordinary Resolution, the consent or concurrence of the Debentureholders shall not be required in connection with the execution, acknowledgement or delivery of a supplemental indenture. The Corporation and the Trustee may amend any of the provisions of this Indenture related to matters of United States law or the issuance of Debentures into the United States in order to ensure that such issuances can be made in accordance with applicable law in the United States without the consent or approval of the Debentureholders, provided that, in the opinion of the Trustee (relying on an opinion of Counsel of recognized standing), the rights of the Debentureholders are in no way prejudiced thereby. Further, the Corporation and the Trustee may, without the consent or concurrence of the Debentureholders, by supplemental indenture or otherwise, make any changes or corrections in this Indenture which they shall have been advised by Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistakes or manifest errors contained herein or in any indenture supplemental hereto or any Written Direction of the Corporation provided for the issue of Debentures, providing that in the opinion of the Trustee (relying upon an opinion of Counsel) the rights of the Debentureholders are in no way prejudiced thereby.

**ARTICLE 14 EXECUTION AND FORMAL DATE****14.1      Execution**

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

**14.2      Formal Date**

For the purpose of convenience this Indenture may be referred to as bearing the formal date of August 19, 2022, irrespective of the actual date of execution hereof.

*[The remainder of this page is intentionally blank.]*

**IN WITNESS WHEREOF** the Parties have executed this Convertible Debenture Indenture by the hands of their proper officers in that behalf.

**HYBRID POWER SOLUTIONS INC.**

**By:** "Alex McAulay"  
**Name:** Alex McAulay  
**Title:** CFO & Corporate Secretary

**ODYSSEY TRUST COMPANY**

**By:** "Dan Sander"  
**Name:** Dan Sander  
**Title:** President, Corporate Trust

**By:** "Amy Douglas"  
**Name:** Amy Douglas  
**Title:** Director, Corporate Trust

**SCHEDULE A – FORM OF DEBENTURE**

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) AUGUST 19, 2022 AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

THE UNDERLYING SECURITIES ISSUABLE UPON CONVERSION OF THE DEBENTURES REPRESENTED HEREBY ARE SUBJECT TO VOLUNTARY RESALE RESTRICTIONS AS PER SECTION 4.2 OF THE TERMS AND CONDITIONS OF THIS DEBENTURE CERTIFICATE.

**[if applicable]** THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY ACQUIRING SUCH SECURITIES, AGREES FOR THE BENEFIT OF HYBRID POWER SOLUTIONS INC. (THE "COMPANY") THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY; (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT; OR (C) IN ACCORDANCE WITH ANY OTHER REGISTRATION EXEMPTION EVIDENCED BY AN OPINION OF COUNSEL OF RECOGNIZED STANDING AND ACCEPTABLE TO THE COMPANY AND THE TRANSFER AGENT, AVAILABLE UNDER THE SECURITIES ACT AND APPLICABLE STATE LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA OR ELSEWHERE.

A NEW CERTIFICATE BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY", MAY BE OBTAINED FROM THE COMPANY'S TRANSFER AGENT UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE TRANSFER AGENT AND THE COMPANY, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF SEC REGULATION S UNDER THE SECURITIES ACT AND APPLICABLE FOREIGN LAW.

**HYBRID POWER SOLUTIONS INC.  
UNSECURED NON-TRANSFERRABLE \$0.20 CONVERTIBLE DEBENTURE**

**CERTIFICATE NO: [◆]**

**PRINCIPAL AMOUNT: \$[◆]**

**THIS IS TO CERTIFY THAT**

Hybrid Power Solutions Inc. (hereinafter referred to as the "Company"), for value received, hereby promises to pay to [◆] of [◆] with an email address of [◆] (the "Holder") on [◆] (the "Maturity Date"), or on such earlier or later date as the amount hereof may become due in accordance with the provisions of this non-transferrable unsecured \$0.20 convertible debenture (the "Debenture"), on presentation and surrender of this Debenture, the sum of \$[◆] in the lawful money of Canada (the "Principal Amount"), and to pay interest on the Principal Amount in the amounts and at the times specified in this Debenture.

This Debenture is made subject to the "Terms and Conditions of Unsecured Convertible Debenture", attached hereto.

## TERMS AND CONDITIONS OF UNSECURED CONVERTIBLE DEBENTURE

### ARTICLE 1 INTERPRETATION

- 1.1 For the purpose of this Debenture, unless the subject matter or context is inconsistent therewith or unless otherwise defined below in this section, capitalized terms used herein will have the meaning given thereto in this Debenture. Any capitalized terms used and not otherwise defined in this Debenture shall have the meaning ascribed thereto in the Debenture Indenture.
- (a) **“Accelerated Exercise Period”** has the meaning set out in Section 4.1 herein;
  - (b) **“Agreement”** means the subscription agreement for convertible debentures, pursuant to which the Holder purchased this Debenture from the Company, and any amendments thereto;
  - (c) **“Board”** means the board of directors of the Company as constituted from time to time;
  - (d) **“Business Day”** means a day which is not a Saturday or Sunday or a civic or statutory holiday in Vancouver, British Columbia;
  - (e) **“Closing Date”** means the closing date of the private placement of Debentures pursuant to which this Debenture was issued to the Holder;
  - (f) **“Company”** means Hybrid Power Solutions Inc.;
  - (g) **“Conversion Date”** means the date on which all of this Debenture is converted into Units in accordance with the terms and conditions herein;
  - (h) **“Conversion Price”** means \$0.20 per Unit;
  - (i) **“Debenture”** will mean this instrument;
  - (j) **“Debenture Indenture”** means the debenture indenture dated August 19, 2022 entered into between the Company and Odyssey Trust Company as debenture trustee that governs the creation and issuance of this Debenture;
  - (k) **“DRS”** has the meaning ascribed to it in Section 4.2;
  - (l) **“Event of Default”** means any event specified in Section 5.1 herein, which has not been waived;
  - (m) **“Extended Maturity Date”** has the meaning ascribed to it in Section 2.4;
  - (n) **“Going Public Transaction”** has the meaning set out in Section 4.2 herein;
  - (o) **“Holder”** has the meaning ascribed to it on the front page of this Debenture;

- (p) **“IPO”** means the initial public offering of the Company’s securities;
- (q) **“IPO Miss”** has the meaning ascribed to it in Section 2.4;
- (r) **“Listing Date”** the date of the completion of the Going Public Transaction;
- (s) **“Maturity Date”** has the meaning ascribed to it on the front page of this Debenture;
- (t) **“NI 45-102”** means National Instrument 45-102 – Resale of Securities;
- (u) **“Outside Date”** means the date that is 180 days from the date of the Preliminary Receipt;
- (v) **“Outstanding Debentures”** means the unsecured non-transferable \$0.02 convertible debentures issued by the Company;
- (w) **“Principal Amount”** has the meaning ascribed to it on the front page of this Debenture;
- (x) **“Preliminary Prospectus”** means a long form preliminary prospectus filed by the Company with applicable securities commissions in connection with a Going Public Transaction;
- (y) **“Preliminary Prospectus Deadline”** means the date that is one year from the Closing Date;
- (z) **“Preliminary Prospectus Delay”** has the meaning ascribed to it in Section 2.3;
- (aa) **“Preliminary Receipt”** means a receipt for the Preliminary Prospectus, which evidences that a receipt has been or has been deemed to be issued for the Preliminary Prospectus from all applicable securities commissions including the principal regulator and such other regulators pursuant to Multilateral Instrument 11-102 – Passport System;
- (bb) **“Securities”** means the Debentures, the Units, the Shares underlying the Units, the Warrants, and the Warrant Shares, as applicable;
- (cc) **“Share”** means one common share in the capital stock of the Company;
- (dd) **“Units”** has the meaning set out in Section 4.1 of this Debenture;
- (ee) **“Voluntary Resale Restrictions”** has the meaning set out in Section 4.2. hereto;
- (ff) **“Warrants”** has the meaning set out in Section 4.1 of this Debenture; and
- (gg) **“Warrant Shares”** means the common shares of the Company issuable upon exercise of the Warrants.



**ARTICLE 2**  
**REPAYMENT AND INTEREST**

- 2.1. **Repayment.** The Company hereby acknowledges and confirms itself indebted to the Holder and promises to pay to the Holder the Principal Amount or any outstanding balance thereof, on the earlier of:
- (a) the Maturity Date; or
  - (b) the occurrence of an Event of Default,
- and promises to pay interest, if any, on the Principal Amount at the rate and times as hereinafter set forth.
- 2.2. **Interest.** Subject to any other provisions of this Certificate, this Debenture will bear no interest.
- 2.3. **Preliminary Prospectus Delay.** Notwithstanding any other provisions of this Certificate, if the Company fails to file a Preliminary Prospectus by the Preliminary Prospectus Deadline (a “**Preliminary Prospectus Delay**”), this Debenture will accrue interest at the rate of 10% per annum compounded monthly on an accrual basis, payable on a semi-annual basis, calculated from and including the Closing Date until the earlier of the Conversion Date and the date all of the Principal Amount has been repaid. For greater certainty, any interest accrued prior to the Preliminary Prospectus Deadline will be paid on the semi-annual payment dates in the subsequent year.
- 2.4. **IPO Miss.** Notwithstanding the foregoing, if the Company files the Preliminary Prospectus prior to the Maturity Date, but does not complete the IPO for minimum gross proceeds of \$5,000,000 by the Outside Date (an “IPO Miss”), then, provided the Principal Amount remains outstanding and has not been repaid:
- (a) the Maturity Date will automatically be extended to the date which is five years from the Closing Date (the “**Extended Maturity Date**”), and
  - (b) this Debenture will bear interest at the prime rate (as set out from time to time by the Bank of Canada on its website at the beginning of each calendar quarter) on an accrual basis and calculated from and including the Outside Date until the earlier of the Conversion Date and the date all of the Principal Amount has been repaid, subject to the Company’s prepayment right set out below in Section 2.7.
- 2.5. **Preliminary Prospectus Delay and IPO Miss.** If prior to the Maturity Date there are both a Preliminary Prospectus Delay and an IPO Miss (for clarity, a scenario where the Company files a Preliminary Prospectus after the Preliminary Prospectus Deadline and such filing is followed by an IPO Miss), then this Debenture will accrue interest for the first two years from the Closing Date at a rate of 10% per annum and thereafter at a rate of 10% per annum, compounded monthly on an accrual basis, until the earlier of the Conversion Date and the date on which all of the Principal Amount has been repaid, subject to any prepayment by the Company.
- 2.6. **No Concurrent Interest.** For clarity, the interest rates contemplated in Sections 2.3, 2.4, and 2.5 under the headings “Preliminary Prospectus Delay”, “IPO Miss”, and “Preliminary Prospectus Delay

and IPO Miss” contemplate different scenarios, are not intended to apply concurrently, and the Debentures will in no circumstances accrue interest under multiple concurrent rates.

- 2.7. **Prepayment.** If there is an IPO Miss, then the Company may, at any time following the Outside Date, prepay, without penalty, all or a portion of the Principal Amount and interest outstanding under this Debenture in cash prior to the Extended Maturity Date and, all or any portion of such amounts becoming due under this Debenture.
- 2.8. **Order of Repayment.** All payments of the Principal Amount, interest thereon and other amounts which are payable by the Company to the Holder under this Debenture will be applied in the following order:
- (a) all expenses and other amounts from time to time secured hereunder (other than the Principal Amount and interest thereon)
  - (b) interest payable hereunder; and
  - (c) the Principal Amount.
- 2.9. **Obligations.** This Debenture is issued pursuant to the Debenture Indenture and upon payment of all amounts owing under this Debenture (such payment which may include the issuance of Units upon the automatic conversion of all of the Principal Amount thereon in accordance with Article 4 herein), the obligations of the Company in respect of this Debenture and the Debenture Indenture will terminate.
- 2.10. **Ranking.** This Debenture and all other Debentures with the Conversion Price sold by the Company will rank *pari passu* with one another and repayment of such Debentures will be made to the holders thereof on a *pari passu* basis and will be subordinate to the Outstanding Debentures.

### **ARTICLE 3** **AUTHORIZED ISSUE**

- 3.1. The Company hereby represents and warrants to and in favour of the Holder that this Debenture has been issued in accordance with the resolutions of the Board and all other matters and things have been done and performed so as to authorize and make the creation and issue of this Debenture and the execution and delivery thereof legal, valid and binding against the Company in accordance with the constating documents of the Company and all statutes and laws applicable to the Company.

### **ARTICLE 4** **RIGHT TO CONVERT**

- 4.1. **Conversion.** Notwithstanding anything contained herein, the Holder may not and has no right to convert this Debenture into Units. If the Company completes a Going Public Transaction, then the Principal Amount and, at the Company’s discretion any interest on the Debentures accrued in accordance with this Debenture, will automatically, be converted the “**Conversion**”) without payment of additional consideration and without further action on the part of the Holder, into Units at the Conversion Price on either the Listing Date or a date that is within ten (10) Business Days

(before or after) of the Listing Date, such date to be determined by the Board in its sole discretion (the “**Conversion Date**”), subject to any applicable stock exchange acceptance and securities laws. Prior to delivery of the Units issuable upon conversion of this Debenture, the Company may request certain certifications and confirmations from the Holder. If the Company does not complete a Going Public Transaction, the Conversion will not occur.

Each “Unit” will be comprised of one Share and one-half of one transferrable common share purchase warrant (each whole warrant, a “**Warrant**”). Each Warrant is exercisable into one Warrant Share at \$0.60 per Warrant Share for a period of two years from the Conversion Date, subject to acceleration as set out below.

If over a period of 15 consecutive trading days between the date of issuance and the expiry of the Warrants following the Listing Date, the daily volume weighted average trading price of the Shares (on the stock exchange where the Shares are listed for trading and the majority of the trading volume occurs) exceeds \$0.80 on each of those 15 consecutive days, the Company may, at any time after such an occurrence, give written notice (via news release or direct written notice) to the holders of the Warrants that the Warrants will expire at 4:00 p.m. (Vancouver time) on the 30th day following the giving of notice (the “**Accelerated Exercise Period**”) unless exercised by the holders prior to such date. Upon receipt of such notice, the holders of the Warrants will have 30 days to exercise their Warrants. Any Warrants which remain unexercised at the end of the Accelerated Exercise Period will automatically expire at that time. Any insiders who are unable to exercise their Warrants due to any ‘blackout period’ being in effect during the term of their Warrants will automatically have their Accelerated Exercise Period extended by the aggregate time of the blackout period(s).

The Warrants will be created and issued pursuant to the terms of a warrant indenture to be entered into on the Closing Date between the Company and warrant agent to be appointed by the Company.

**4.2. Voluntary Resale Restrictions.** In addition to any statutory or regulatory imposed escrow requirements, the Units issuable upon Conversion of this Debenture will be subject to the following voluntary resale restrictions (“**Voluntary Resale Restrictions**”):

- 10% of the Units (including all underlying securities) released on the Listing Date;
- 40% of the Units (including all underlying securities) released six (6) months after the Listing Date; and
- 50% of the Units (including all underlying securities) released twelve (12) months after the Listing Date.

The certificate(s) or Direct Registration System (“**DRS**”) advice statement(s) representing the Shares and Warrants issued upon conversion of this Debenture and any Warrant Shares issuable upon exercise of the Warrants will bear a legend to give effect to the Voluntary Resale Restrictions in accordance with Section 7.3 herein.

For purposes of this Debenture, a “Going Public Transaction” means: (I) the listing of the Shares on a recognized stock exchange in Canada or United States; or (II) the completion of a transaction (including a qualifying transaction, reverse takeover, reverse or forward triangular merger, amalgamation, merger, share exchange, plan of arrangement, business combination or similar transaction) between the Company and another company (or companies) which results in the

shareholders of the Company receiving, in exchange for their securities, securities of a company listed on a recognized stock exchange in Canada or United States.

For greater certainty, the Company will register Shares and Warrants issued pursuant to this section using the registration details of the Holder on the face page of this Debenture.

- 4.3. **Deliveries.** Upon the automatic conversion of this Debenture in accordance with Section 4.1 above, the Company will issue that number of Shares and Warrants to the Holder and the Company will deliver or cause to be delivered to the Holder, the nominee or assignee thereof, a certificate or certificates or DRS advice statement(s) representing the number of Shares and Warrants into which this Debenture has been converted.

The Shares and Warrants issued on conversion of this Debenture may bear legends as provided in Article 7. Fractional Shares will not be issued on any conversion.

- 4.4. **Dividends.** The Holder of this Debenture will only be entitled to receive dividends declared in favour of shareholders of the Company of record on and after a Conversion Date, from which applicable date such Shares will for all purposes be, and be deemed to be, issued and outstanding as fully paid and non-assessable Shares.
- 4.5. **Loss or Destruction.** The forwarding of a certificate or certificates or DRS advice statement(s) representing the Shares and Warrants by the Company to the Holder upon conversion of this Debenture as provided in this Article 4 will satisfy and discharge the Company of the obligations thereof in respect of the Principal Amount converted, provided that in the event of non-receipt of the certificate(s) or DRS advice statement(s) representing such Shares and Warrants by the Holder, or the loss or destruction thereof, the Company, upon being furnished with reasonable evidence of such non-receipt, loss or destruction and indemnity reasonably satisfactory to the Company, will issue to the Holder a replacement certificate or certificates or DRS advice statement(s).
- 4.6. **Adjustments.** The Debenture Indenture makes provision for the adjustment of the Conversion Price under this Debenture in the events therein specified. Notwithstanding any adjustments provided for in the Debenture Indenture or otherwise, the Company shall not be required, upon the conversion of any Debenture, to issue fractional Shares or other securities in satisfaction of its obligations thereunder and, except as provided for therein, any fractions shall be eliminated.

## **ARTICLE 5**

### **EVENTS OF DEFAULT**

- 5.1 **Event of Default.** The Events of Default relating to the Debentures are defined in Article 7 of the Debenture Indenture. Upon the occurrence of an Event of Default, the rights and obligations of the Company, the Trustee and the Holder are set forth in the applicable provisions of the Debenture Indenture.

## **ARTICLE 6**

### **COVENANTS OF THE COMPANY AND EVENTS OF DEFAULT**

- 6.1 **Covenants of the Company.** The Company hereby covenants to the Holder as follows:

- (a) to pay the Principal Amount together with interest and other amounts payable hereunder in accordance with the terms and conditions hereof; and
- (b) to immediately give notice to the Holder of any Event of Default or of any event which with notice or lapse of time, or both, would constitute an Event of Default.

**6.2 Remedies upon Event of Default.** If an Event of Default occurs or the Company fails to perform any of the obligations contained in this Debenture or the Debenture Indenture, the Holder will have the rights as set out in Article 7 of the Debenture Indenture.

## **ARTICLE 7**

### **RESTRICTIONS ON SHARES**

**7.1 U.S. Restrictions.** The Debenture (which for greater certainty includes the underlying Shares, Warrants, and Warrant Shares) has not been registered (and the Company has no intention to register the Debenture or the underlying securities in the future) under United States Securities Act of 1933, as amended or the securities laws of any state of the United States. The certificate(s) or DRS advice statement(s) representing the Securities will bear a legend in substantially the following form as required:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). THE HOLDER HEREOF, BY ACQUIRING SUCH SECURITIES, AGREES FOR THE BENEFIT OF HYBRID POWER SOLUTIONS INC. (THE “COMPANY”) THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY; (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT; OR (C) IN ACCORDANCE WITH ANY OTHER REGISTRATION EXEMPTION EVIDENCED BY AN OPINION OF COUNSEL OF RECOGNIZED STANDING AND ACCEPTABLE TO THE COMPANY AND THE TRANSFER AGENT, AVAILABLE UNDER THE SECURITIES ACT AND APPLICABLE STATE LAWS. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA OR ELSEWHERE.

A NEW CERTIFICATE BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE “GOOD DELIVERY”, MAY BE OBTAINED FROM THE COMPANY’S TRANSFER AGENT UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE TRANSFER AGENT AND THE COMPANY, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF SEC REGULATION S UNDER THE SECURITIES ACT AND APPLICABLE FOREIGN LAW.”

The certificate(s) or DRS advice statement(s) representing the Warrants (and all securities issued in exchange therefor or in substitution thereof) may also bear a legend in substantially the following form as required:

“THESE WARRANTS MAY NOT BE EXERCISED BY OR ON BEHALF OF A U.S. PERSON OR A PERSON IN THE UNITED STATES UNLESS THE SUBSCRIPTION RECEIPT WARRANTS AND THE UNDERLYING SECURITIES HAVE BEEN REGISTERED UNDER THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS IS AVAILABLE.

“UNITED STATES” AND “U.S. PERSON” ARE AS DEFINED BY REGULATION S UNDER THE SECURITIES ACT.”

- 7.2 Hold Period.** The Securities will be subject to an indefinite hold period imposed by NI 45-102. The certificate(s) or DRS advice statement(s) representing the Securities will contain a legend, which will be substantially in the following form, denoting the restrictions on transfer imposed by NI 45-102:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) [the distribution date will be inserted], AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.”

- 7.3 Legend.** The certificate(s) or DRS advice statement(s) representing the Shares and Warrants issuable upon conversion of this Debenture and any Warrant Shares issuable upon exercise of the Warrants will bear a legend in substantially the following form pursuant to the Voluntary Resale Restrictions:

“THESE SECURITIES ARE SUBJECT TO VOLUNTARY RESALE RESTRICTIONS. THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE [◆expiry date of Voluntary Resale Restrictions]”.

## **ARTICLE 8**

### **NOTICES**

- 8.1 Notices.** All notices and other communications provided for herein will be in writing and will be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid or by email or other electronic means indicating the date of receipt and the signatures of the parties:

- (a) If to the Company, at the following address:

Hybrid Power Solutions Inc.  
c/o 1200 – 750 West Pender St.  
Vancouver, BC V6C 2T8  
Attention: Francois Renaud-Byrne – Director

- (b) Email: *[Email Redacted]*

- (c) If to the Holder, at the address or email address on the register maintained by Odyssey Trust Company as debenture trustee.

## **ARTICLE 9**

### **GENERAL**

- 9.1 Transferability.** The Debenture evidenced hereby (or any portion thereof) is non-transferrable and may not be assigned or transferred by the Holder.

- 9.2 **Enurement.** This Debenture and all its provisions will enure to the benefit of the Holder, its successors and assigns and will be binding upon the Company, its successors and assigns.
- 9.3 **Time.** Time will be of the essence hereof.
- 9.4 **Governing Law.** This Debenture will in all respects be subject to and be interpreted and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Holder and the Company hereby attorn to the jurisdiction of the courts of the Province of British Columbia.
- 9.5 **Currency.** In this Agreement, references to “\$” are to Canadian dollars
- 9.6 **Paragraphs and Headings.** The division of this Debenture into articles, sections, subsections, paragraphs and subparagraphs and the provision of headings for all or any part hereof is for convenience of reference only and not for the construction or interpretation of this Debenture.
- 9.7 **Gender.** In this Debenture, unless there is something in the subject matter or context inconsistent therewith, words importing the singular will include the plural and vice versa and words importing either gender or neuter will include the masculine and feminine genders and the neuter.
- 9.8 **Severability.** If a provision of this Debenture is wholly or partially invalid, this Debenture will be interpreted as if the invalid provision was not a part hereof.
- 9.9 **Inconsistencies.** In the event of any inconsistency between the terms of this Debenture and the Debenture Indenture, the terms of the Debenture Indenture shall govern.

IN WITNESS WHEREOF this Debenture has been executed as of the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

**HYBRID POWER SOLUTIONS INC.**

Per: \_\_\_\_\_  
Authorized Signatory

**This Debenture Certificate may be executed and delivered by DocuSign, by e-mail in pdf, or other legally permissible electronic signature, each of which will be deemed to be an original.**



**(FORM OF TRUSTEE'S CERTIFICATE)**

This Certificate is one of the certificates representing the unsecured Convertible Debentures due \_\_\_\_\_ referred to in the Indenture within mentioned.

**ODYSSEY TRUST COMPANY**

By: \_\_\_\_\_  
(Authorized Officer)

**SCHEDULE B – FORM OF DECLARATION FOR REMOVAL OF LEGEND**

***[Available only at such time as the Corporation qualifies as a “foreign issuer” under Regulation S]***

TO: Odyssey Trust Company, as trustee and registrar of the Unsecured Convertible Debentures and transfer agent of the Common Shares of HYBRID POWER SOLUTIONS INC. (the “Corporation”)

AND TO: The Corporation

The undersigned (a) acknowledges that the sale of the securities of the Corporation 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 an “affiliate” of the Corporation, as that term is defined in Rule 405 under the U.S. Securities Act (or is an affiliate solely by virtue of holding the position of a director or officer of the Corporation),

(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 the CSE 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,

(3) neither the seller nor any affiliate of the seller nor any person acting on any of their behalf has engaged or will engage in any “directed selling efforts” (as defined in Regulation S) in the United States in connection with the offer and sale of the 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 defined in Rule 144(a)(3) under the U.S. Securities Act),

(5) the seller does not intend to and will not replace the 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 under the U.S. Securities Act.

*[Signature Page Follows]*

Certificate Number: \_\_\_\_\_

Number of Debentures: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Affirmation by Seller’s Broker-Dealer (required for sales pursuant to Section (b)(2)(B)above)**

We have read the foregoing representations letter of our customer, \_\_\_\_\_ (the “**Seller**”), dated \_\_\_\_\_, 20\_\_\_\_, pursuant to which the Seller has requested that we sell, for the Seller’s account, the securities of the Corporation referenced above which are represented by certificate number \_\_\_\_ (the “**Securities**”). We have executed sales of the Securities pursuant to Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”), on behalf of the Seller. In that connection, we hereby represent to you as follows:

- (1) no offer to sell Securities was made to a person in the United States;
- (2) the sale of the Securities was executed in, on or through the facilities of the CSE, and, to the best of our knowledge, the sale was not pre-arranged with a buyer in the United States;
- (3) no “directed selling efforts” were made in the United States by the undersigned, any affiliate of the undersigned, or any person acting on behalf of the undersigned; and
- (4) we have done no more than execute the order or orders to sell the Securities as agent for the Seller and will receive no more than the usual and customary broker’s commission that would be received by a person executing such transaction as agent.

For purposes of these representations: “affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the undersigned; “directed selling efforts” means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the Securities (including, but not be limited to, the solicitation of offers to purchase the Securities from persons in the United States); and “United States” means the United States of America, its territories or possessions, any State of the United States, and the District of Columbia.

Legal counsel to the Corporation shall be entitled to rely upon the representations, warranties and covenants contained in this letter to the same extent as if this letter had been addressed to them.

Name of Firm

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Title