

NOVADAQ TECHNOLOGIES INC.

as Issuer

- and -

The Guarantor named herein

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

as Trustee

INDENTURE

Dated as of February 18, 2009

providing for the issue of 5% Convertible Senior

Unsecured Debentures due February 18, 2014

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION.....	2
1.1 Definitions.....	2
1.2 Interpretation.....	13
1.3 Accounting Terms.....	13
1.4 Headings and Table of Contents	13
1.5 Section and Schedule References	13
1.6 Governing Law	14
1.7 Currency.....	14
1.8 Non-Business Days	14
1.9 Time	14
1.10 Independence of Covenants	14
1.11 Form of Documents Delivered to Trustee	14
1.12 Acts of Holders	15
1.13 Interest Payments and Calculations	16
1.14 English Language.....	16
1.15 Successors and Assigns.....	17
1.16 Severability Clause	17
1.17 Benefits of Indenture.....	17
1.18 Unclaimed Debentures.....	17
1.19 Schedules	17
1.20 Benefits of Indenture through Trustee	17
ARTICLE 2 THE DEBENTURES	18
2.1 Limit of Issue and Designation of Debentures	18
2.2 Form and Terms of Debentures	18
2.3 Interest.....	18
2.4 Prescription	20
2.5 Issue of Debentures	20
2.6 Execution	20
2.7 Certification by Trustee	21
2.8 Registration of Exchanges	21

2.9	Persons Entitled to Payment	22
2.10	Payment of Principal and Interest on Definitive Debentures.....	22
2.11	Book-Based System	24
2.12	Payments of Principal and Interest for Book-Entry Only Debentures.....	25
2.13	Rank	25
2.14	Register and Transfer	26
2.15	Taxes	27
2.16	Cancellation of Debentures.....	28
2.17	Mutilated, Lost, Stolen or Destroyed Debentures.....	28
2.18	Access to Lists of Holders	29
2.19	Legend on Debentures	30
ARTICLE 3 REPURCHASE AND CANCELLATION OF DEBENTURES		31
3.1	Purchase of Debentures.....	31
3.2	Repurchase of Debentures at Option of the Holder upon a Fundamental Change	31
3.3	Effect of Fundamental Change Repurchase Notice	34
3.4	90% Redemption Right.....	35
3.5	Deposit of Fundamental Change Repurchase Price.....	36
3.6	Repurchase to the Corporation.....	37
3.7	Debentures Purchased in Part	37
3.8	Optional Redemption of Debentures	37
3.9	Notice of Redemption	38
3.10	Debentures Due on Redemption Date.....	38
3.11	Deposit of Redemption Moneys	38
3.12	Places of Payment	38
3.13	Compliance with Applicable Securities Laws upon Purchase of Debentures	39
3.14	Cancellation of Purchased Debentures	39
ARTICLE 4 CONVERSION		39
4.1	Conversion Right	39
4.2	Completion of Conversion.....	40
4.3	Fractional Shares.....	41
4.4	Relating to the Issue of Common Shares.....	41

4.5	Legend on Common Shares	42
4.6	No Remuneration for Soliciting Conversions	43
ARTICLE 5 MATURITY		43
5.1	Payment of Principal and Interest at Maturity	43
5.2	Right to Repay Principal Amount in Common Shares at Maturity	43
ARTICLE 6 ADJUSTMENTS		46
6.1	Adjustment of Conversion Rate	46
6.2	No Adjustment	53
6.3	Notice of Adjustment	54
6.4	Notice of Certain Transactions	54
6.5	Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale	55
6.6	Voluntary Increase	56
6.7	Notice of Expiry of Conversion Right	56
6.8	Protection of Trustee	56
ARTICLE 7 NEGATIVE COVENANTS		57
7.1	Limitation on Additional Indebtedness	57
7.2	Limitation on Dividends	57
7.3	Negative Pledge	57
7.4	Limitation on Acquisitions	57
7.5	Limitation on Dispositions	57
7.6	Limitation on Amendments to Constitutional Documents	58
ARTICLE 8 COVENANTS OF THE CORPORATION		58
8.1	Payment of Principal, Premium and Interest	58
8.2	Corporate Existence; Books of Account	58
8.3	Compliance Certificate	58
8.4	Notice of Default	59
8.5	Securities Laws	59
8.6	Reporting	59
8.7	Performance of Covenants by Trustee	61
8.8	Payment of Trustee's Remuneration	61
8.9	Further Instruments and Acts	61
ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES		62

9.1	Events of Default and Enforcement.....	62
9.2	Notice of Event of Default.....	64
9.3	Waiver of Acceleration.....	64
9.4	Waiver.....	65
9.5	Other Remedies.....	65
9.6	Application of Money Collected.....	65
9.7	Control by Holders.....	66
9.8	Limitation on Suits.....	66
9.9	Collection Suit by Trustee	66
9.10	Trustee May File Proofs of Claim	67
9.11	Undertaking for Costs	67
9.12	Delay or Omission Not Waiver.....	67
9.13	Remedies Cumulative	67
9.14	Judgment Against the Corporation	67
9.15	Rights of Holders to Receive Payment and to Convert	67
ARTICLE 10 SATISFACTION AND DISCHARGE.....		68
10.1	Non-Presentation of Debentures	68
10.2	Discharge	68
ARTICLE 11 THE TRUSTEE		69
11.1	Duties of Trustee.....	69
11.2	Employ Agents.....	69
11.3	Reliance on Evidence of Compliance	69
11.4	Provision of Evidence of Compliance to Trustee	70
11.5	Contents of Evidence of Compliance	70
11.6	Advice of Experts	70
11.7	Trustee May Deal in Debentures	71
11.8	Conditions Precedent to Trustee's Obligation to Act	71
11.9	Trustee Not Required to Give Security.....	71
11.10	Resignation or Removal of Trustee; Conflict of Interest.....	72
11.11	Authority to Carry on Business; Resignation	73
11.12	Protection of Trustee.....	73
11.13	Additional Representations and Warranties of Trustee	75
11.14	Third Party Interests.....	75

11.15	Trustee Not Bound to Act	76
11.16	Compliance with Privacy Laws	76
ARTICLE 12 MEETINGS OF DEBENTUREHOLDERS		76
12.1	Purposes for Which Meetings May be Called	76
12.2	Call, Notice and Place of Meetings.....	77
12.3	Proxies.....	77
12.4	Persons Entitled to Vote at Meetings.....	78
12.5	Quorum; Action	78
12.6	Determination of Voting Rights; Chairman; Conduct and Adjournment of Meetings.....	79
12.7	Counting Votes and Recording Action of Meetings.....	80
12.8	Instruments in Writing	80
12.9	Holdings by the Corporation Disregarded	80
ARTICLE 13 AMALGAMATION, CONSOLIDATION, CONVEYANCE, TRANSFER OR LEASE.....		81
13.1	Amalgamation and Consolidations of Corporation and Conveyances Permitted Subject to Certain Conditions.....	81
13.2	Rights and Duties of Successor Corporation	82
ARTICLE 14 GUARANTEE		82
14.1	Guarantors	82
14.2	Release of a Guarantor.....	82
14.3	Waiver Regarding Material Information	82
ARTICLE 15 NOTICES		83
15.1	Notice to Corporation	83
15.2	Notice to Holders	83
15.3	Notice to Trustee.....	84
ARTICLE 16 AMENDMENTS, SUPPLEMENTS AND WAIVERS.....		84
16.1	Without Consent of Holders	84
16.2	With Consent of Holders	85
16.3	Execution of Supplemental Indentures	86
16.4	Effect of Supplemental Indentures.....	87
16.5	Reference in Debentures to Supplemental Indentures	87
16.6	Prior Approval of Recognized Stock Exchange	87

16.7	Officer's Certificate and Opinion of Counsel	87
ARTICLE 17 MISCELLANEOUS PROVISIONS		88
17.1	Acceptance of Trusts	88
17.2	Protection of Trustee	88
17.3	Counterparts and Formal Date	88

THIS INDENTURE dated as of February 18, 2009.

BETWEEN: **NOVADAQ TECHNOLOGIES INC.**, a corporation governed by the laws of Canada;

(the “**Corporation**”)

- and -

The Guarantor (as defined herein)

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company existing under the laws of Canada.

(the “**Trustee**”)

RECITALS

A. The Corporation wishes to provide for the creation and issue of Convertible Senior Unsecured Debentures with the designation of “**5% Convertible Senior Unsecured Debentures due February 18, 2014**” (the “**Debentures**”), all upon the terms and conditions set forth in this Indenture (as hereinafter defined);

B. The Debenture will be guaranteed on a unsecured basis by the Guarantor;

C. All necessary acts and proceedings have been done and taken and all necessary resolutions have been passed to authorize the execution and delivery of this Indenture by the Corporation and the Guarantor, to make the same effective and binding upon the Corporation and the Guarantor, and to make the Debentures, when certified by the Trustee and issued as provided in this Indenture, valid, and legally binding obligations of the Corporation with the benefit and subject to the terms of this Indenture and the Guarantor has done all things necessary to make its Guarantee (as defined herein), when executed by the Guarantor, the valid and legally binding obligation of such Guarantor;

D. All necessary acts and proceedings have been done and taken and all necessary resolutions have been passed to authorize the issuance of the Common Shares (as hereinafter defined) that may be issued upon conversion or maturity of the Debentures; and

E. The foregoing recitals are made as representations and statements of fact by the Corporation and the Guarantor and not by the Trustee;

THEREFORE, it is hereby covenanted, agreed and declared 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 below shall have the following meanings:

“90% Redemption Date” has the meaning ascribed thereto in section 3.4(b);

“90% Redemption Notice” has the meaning ascribed thereto in section 3.4(a);

“90% Redemption Price” of any Debenture, means 110% of the principal amount of the Debenture to be redeemed plus accrued and unpaid interest, if any, to but excluding the 90% Redemption Date;

“90% Redemption Right” has the meaning ascribed thereto in section 3.4(a);

“Acquisition” shall mean, with respect to any Person, any purchase or other acquisition, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an equity interest in, such other Person that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates) or of all or substantially all of the Property of any other Person, or (b) any division, business, operation or undertaking of any other Person or of all or substantially all of the Property of any division, business, operation or undertaking of any other Person;

“Act” or **“Act of Holder(s)”**, when used with respect to any Holder(s), shall have the meaning specified in subsection 1.12(a);

“Affiliate” shall have the meaning ascribed thereto in the National Instrument 45-106-Prospectus and Registration Exemptions;

“Applicable Law” shall mean, at any time, with respect to any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Governmental Authority relating or applicable at such time to such Person, property, transaction, event or other matter, and shall also include any interpretation thereof by any Person having jurisdiction over it or charged with its administration or interpretation;

“Applicable Securities Law” shall mean any Applicable Law in any jurisdiction regulating, or regulating disclosure with respect to, any sale or distribution of securities in, or to residents of, such jurisdiction;

“Applicants” has the meaning ascribed thereto in subsection 2.18(b);

“Beneficial Holder” means a Person who is the beneficial owner of a Debenture, as shown on a list maintained by a Participant or the Depository;

“Board of Directors” shall mean either the Board of Directors of the Corporation, or any committee of that board duly authorized to make a decision on the matter in question;

“Board Resolution” shall mean a copy of a resolution certified by the Chairman, Chief Executive Officer, the Chief Financial Officer, or any Vice-President, Secretary or Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors and to be in full force and effect and unamended on the date of such certification;

“Book-Based System” shall mean, in relation to a Global Debenture, the debt clearing, record entry, transfer and pledge systems and services established and operated by or on behalf of the Depository for the Debentures (including, where applicable, pursuant to one or more agreements between such Depository and its Participants establishing the rules and procedures for such systems and services) or any successor systems or services thereof;

“Book-Entry Only Debentures” means Debentures issued pursuant to the Book-Based System of the Depository;

“Business Combination” has the meaning ascribed thereto in section 6.5;

“Business Day” shall mean any day of the week, other than Saturday, Sunday or a statutory holiday in the Province of Ontario, on which banking institutions are open for business in the City of Toronto, Ontario;

“Canadian Dollar” shall mean lawful currency of Canada;

“Canadian-US Exchange Rate” means, on any date, (i) if on such date, the Bank of Canada sets an average noon spot rate of exchange for the conversion of one Canadian dollar into United States dollars, such rate; and (ii) in any other case, the rate for such date for the conversion of one Canadian dollar into United States dollars calculated in such manner as may be determined by the Board of Directors from time to time acting in good faith;

“Canadian generally accepted accounting principles” shall mean generally accepted accounting principles established from time to time by the Canadian Institute of Chartered Accountants;

“CDS” shall mean CDS Clearing and Depository Services Inc., together with its successors from time to time;

“Certificate of the Corporation” shall mean a certificate signed by a Responsible Officer of the Corporation;

“Change of Control” means the occurrence of any of the following after the date hereof: (i) the acquisition by any Person of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of Voting Shares entitling that Person to exercise 50.1% or more of the total voting power of all shares of the Corporation’s capital stock entitled to vote generally in elections of directors, other than any acquisition by the Corporation, any of its subsidiaries or any of its employee benefit plans; (ii) any direct or indirect conveyance, transfer, sale, lease or other disposition (other than by way of merger, amalgamation, statutory arrangement, or consolidation) in one or a series of related transactions of all or substantially all of the Corporation’s properties and assets to another Person; or (iii) the consolidation, amalgamation, statutory arrangement, or merger of the Corporation with or into any other Person, or any merger of another Person into the Corporation, provided that this clause (iii) shall not apply to any transaction (A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Corporation’s capital stock and (B) pursuant to which holders of the Corporation’s capital stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50.1% or more of the total voting power of all shares of the Corporation’s capital stock entitled to vote generally in elections of directors of the continuing or surviving Person immediately after the transaction; or (iv) if, during any consecutive two-year period, individuals who at the beginning of that two-year period constituted the Corporation’s Board of Directors, together with any new directors whose election to the Corporation’s Board of Directors, or whose nomination for election by the Corporation’s shareholders was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Corporation’s Board of Directors then in office, except where such change is the direct result of action taken by a majority of the Debentureholders;

“Common Shares” means the common shares in the share capital of the Corporation;

“Conversion Date” has the meaning ascribed thereto in section 4.1(b);

“Conversion Notice” has the meaning ascribed thereto in subsection 4.1(b);

“Conversion Price” per Common Share means the quotient of (i) \$1,000 divided by (ii) the then applicable Conversion Rate, rounded to the nearest cent; the Conversion Price shall initially be \$1.87 per Common Share subject to adjustment from time to time pursuant hereto;

“Conversion Rate” means the rate at which Common Shares shall be delivered upon conversion, which rate shall initially be 534.75942 Common Shares per

\$1,000 principal amount of Debentures, as adjusted from time to time pursuant hereto;

“Corporate Trust Office” shall mean the principal office or offices of the Trustee in the City of Toronto, Province of Ontario, at which at any particular time its corporate trust business shall be administered;

“Corporation” shall mean Novadaq Technologies Inc. until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “Corporation” shall mean such successor corporation;

“Corporation Request” or **“Corporation Order”** shall mean a written request or order signed in the name of the Corporation by any Responsible Officer of the Corporation and delivered to the Trustee;

“Counsel” shall mean, in the case of Counsel to the Trustee, any barrister, solicitor or other lawyer or firm of barristers, solicitors or other lawyers retained or employed by the Trustee and, in the case of Counsel to the Corporation, any barrister, solicitor or other lawyer or firm of barristers, solicitors or other lawyers retained or employed by the Corporation;

“Current Market Price” has the meaning ascribed thereto in subsection 6.1(i);

“Date of Determination” means, as applicable, the Conversion Date, the Payment Date or the Maturity Date;

“Debentureholder(s)” or **“Holder(s)”** means the registered holder(s) of Debentures for the time being, as they appear on the register of Debentures maintained by the Trustee on behalf of the Corporation and the Debentureholders, and including, for greater certainty, in the case of any Global Debenture, the Depository or its nominee in whose name such registered Global Debenture is registered, as the case may be;

“Debentures” means the 5% Convertible Senior Unsecured Debentures due February 18, 2014 issued under this Indenture and certified pursuant to this Indenture and shall include in all cases any PIK Debentures issued under this Indenture and certified pursuant to the Indenture;

“Default” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default with the giving of notice, passage of time, or both;

“Definitive Debentures” means Debentures in the form of individual certificates in definitive fully registered form issued pursuant to section 2.2 and substantially in the form of Schedule 2.2;

“Depository”, in respect of Book-Entry Only Debentures, means CDS and includes any successor corporation or any other depository subsequently

appointed by the Corporation as the depository in respect of Book-Entry Only Debentures;

“Event of Default” shall mean any of the events identified in subsection 9.1(a) as being an Event of Default;

“Extraordinary Resolution” means a resolution at a meeting of Debentureholders duly convened and held in accordance with the provisions of Article 12 passed by the favourable votes of the Holders of each Outstanding Debenture affected, represented in person or by proxy at such meeting or a resolution signed in the manner contemplated by section 12.8;

“Fiscal Year” means the twelve month period ending on the last day of December in any year.

“Freely Tradeable” means, in respect of shares of any class in the capital of any corporation, shares which (i) are issuable by a corporation without the necessity of filing a prospectus or any other similar offering document (other than such prospectus or similar offering document that has already been filed) under Applicable Securities Laws and such issue does not constitute a distribution (other than a distribution already qualified by prospectus or similar offering document) or constitutes an exempt distribution under Applicable Securities Laws; and (ii) can be traded by the holder thereof without any restriction under Applicable Securities Laws, such as hold periods, except in the case of a “control distribution” as defined under Applicable Securities Laws and except in respect of shares required to carry legends pursuant to sections 2.19 and 4.5 hereto;

“Fundamental Change” means the occurrence of a Change of Control or a Termination of Trading following the original issuance of the Debentures;

“Fundamental Change Corporation Notice” has the meaning ascribed thereto in Section 3.2(a);

“Fundamental Change Repurchase Date” means (i) with respect to a Change of Control, the effective date of the transaction causing the Change of Control, and (ii) with respect to a Termination of Trading, the date that is not less than 30 days nor more than 45 days after the date of the Fundamental Change Corporation Notice with respect to such Termination of Trading;

“Fundamental Change Repurchase Notice” has the meaning ascribed thereto in subsection 3.2(b);

“Fundamental Change Repurchase Price” of any Debenture, means 110% of the principal amount of the Debenture to be purchased plus accrued and unpaid interest, if any, to but excluding the Fundamental Change Repurchase Date;

“Global Debenture” means one or more fully registered global Debentures as described in subsection 2.11(a);

“Governmental Authority” shall mean, when used with respect to any Person, any government, parliament, legislature, regulatory authority, agency, tribunal, department, commission, board, instrumentality, court, arbitration board or arbitrator or other law, regulation or rule-making entity (including a Minister of the Crown, any central bank, Superintendent of Financial Institutions, Recognized Stock Exchange, or other comparable authority or agency) having or purporting to have jurisdiction on behalf of, or pursuant to the laws of, Canada or any country in which such Person is residing, incorporated, continued, amalgamated, merged or otherwise created or established or in which such Person carries on business or holds property, or any province, territory, state, municipality, district or political subdivision of any such country or of any such province, territory or state of such country;

“Guarantee” means a guarantee of the obligations of the Corporation with respect to the Debentures to be provided in accordance with Section 14.1 hereof and in the form of Schedule 14.1 attached hereto;

“Guarantor” means each of Novadaq Corp. and each other Subsidiary that may provide the Guarantee from time to time.

“Indebtedness” means , with respect to a Person, and without duplication:

- (a) indebtedness of such Person for monies borrowed or raised, including any indebtedness represented by a note, bond, debenture or other similar instrument of such Person;
- (b) reimbursement obligations of such Person arising from bankers' acceptance, letters of credit or letters of guarantee or similar instruments;
- (c) indebtedness of such Person for the deferred purchase price of property or services, other than for consumable non-capital goods and services purchased in the ordinary course of business, including arising under any conditional sale or title retention agreement;
- (d) obligations of such Person under capital or synthetic leases and sale and leaseback transactions;
- (e) the aggregate amount at which shares in the capital of such Person that are redeemable at fixed dates or intervals or at the option of the holder thereof may be redeemed; and
- (f) guarantees or Liens granted by such Person in respect of Indebtedness of another Person;

“Indenture” means or refers to this Indenture as amended or supplemented by any indenture, deed or instrument supplemental or ancillary thereto;

“Independent Member of the IIROC” means a member firm of the Investment Industry Regulatory Organization of Canada that, in the determination of the Board of Directors acting reasonably, is independent of the Corporation and the issuer of any securities that are the subject matter of the engagement, having regard to, among other things, the considerations set out in National Instrument 33-105 *Underwriting Conflicts* or any successor instrument;

“Interest Payment Date” means the last day of June and the last day of December in each year until all interest has been paid, the last Interest Payment Date being the Maturity Date;

“Interest Period” has the meaning ascribed thereto in Section 2.3(a);

“Interest Record Date” means, with respect to an Interest Payment Date, the date determined as the record date for the determination of the Holders to which interest on Debentures is payable on such Interest Payment Date, which date shall be the 15th day of the month in which such Interest Payment Date occurs (or if such day is not a Business Day, the immediately preceding Business Day);

“Issue Date” means the date on which the Debentures are issued by the Corporation pursuant to this Indenture, being February 18, 2009;

“Lien” means any hypothec, security interest, mortgage, lien, right of preference, pledge, assignment by way of security or any other agreement or encumbrance of any nature that secures the performance of an obligation, and a Person is deemed to own subject to a Lien any property or assets that it has acquired or hold subject to the interest of a vendor or lessor under any conditional sale agreement, capital or synthetic lease or similar agreement (other than an operating lease) relating to such property or assets;

“Maturity” shall mean the date on which principal becomes due and payable under the Debentures;

“Maturity Date” means February 18, 2014 or such other date on which the Debentures become due and payable;

“Maturity Notice” has the meaning ascribed thereto in subsection 5.2(a);

“Notice” shall mean any notice, document or other communication required or permitted to be given under this Indenture;

“Offer to Purchase” means an offer by the Corporation to purchase Debentures from the Debentureholders, for cash, commenced by mailing a notice to the Trustee specifying the material terms of the Offer to Purchase and any other information required in such notice by the Indenture;

“Officer’s Certificate” shall mean a written certificate signed by any Responsible Officer of the Corporation, and delivered to the Trustee;

“Opinion of Counsel” shall mean a written opinion addressed to the Trustee (among other addressees as applicable) by Counsel who shall be reasonably satisfactory to the Trustee;

“Outstanding” when used with respect to Debentures shall mean, as of the date of determination, all Debentures theretofore certified and delivered by the Trustee under this Indenture, except:

- (i) Debentures theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Debentures for whose payment, purchase, or repurchase money in the necessary amount has been theretofore deposited with the Trustee under gratuitous deposit or set aside and segregated in trust by the Corporation (if the Corporation shall act as its own paying agent) for the Holders of such Debentures; and
- (iii) Debentures that have been surrendered to the Trustee pursuant to section 2.16 or in exchange for or in lieu of which other Debentures have been certified and delivered pursuant to this Indenture, other than any such Debentures in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Debentures are held by a bona fide purchaser in whose hands such Debentures are valid obligations of the Corporation;

provided, however, that: (A) in determining whether the Holders of the requisite principal amount of Debentures then Outstanding have taken any Act of Holders hereunder, Debentures owned by the Corporation or any Affiliate of the Corporation shall be disregarded and deemed not to be then Outstanding; (B) in determining whether the Trustee shall be protected in acting and relying upon such Act of Holders, only Debentures of which the Trustee has actual notice that they are so owned shall be so disregarded; (C) Debentures so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act with respect to such Debentures and that the pledgee is not the Corporation or any Affiliate of the Corporation; and (D) a Holder that has become an Affiliate of the Corporation as a result of it or one or more of its Affiliates having converted some or all of its Debentures into Common Shares shall not be considered an Affiliate of the Corporation for the purposes of this determination;

“Participant” shall mean, in relation to a Depository, a broker, dealer, bank or other financial institution or other Person on whose behalf such Depository or its nominee holds Debentures pursuant to a Book-Based System operated by such Depository;

“Permitted Liens” means:

- (a) Liens imposed or arising by operation of law, in each case, in respect of obligations not yet due or which have been postponed or are being contested in good faith and by appropriate proceedings to the extent that adequate reserves are maintained;
- (b) pledges or deposits made in the ordinary course of business in connection with bids or tenders or to comply with the requirements of any legislation or regulation applicable to the Person concerned or its business or assets; and
- (c) any Liens created in relation to Purchase Money Obligations that is permitted under section 7.1 hereof, provided that such security interest does not extend to any asset other than the asset being acquired, and its proceeds.

“Person” shall mean any natural person, corporation, firm, partnership, joint venture, trustee, executor, liquidator of a succession, administrator, legal representative or other unincorporated association, trust, unincorporated organization, government or Governmental Authority and pronouns relating thereto have a similar extended meaning;

“PIK Debentures” has the meaning ascribed thereto in section 2.3(b);

“PIK Interest” has the meaning described thereto in section 2.3(b);

“Place of Payment” shall mean the place or places where the principal of and any premium, if any, interest and other amounts on Debentures are payable;

“Proceeding” shall mean any suit, action or other judicial or administrative proceeding;

“Property” means in respect of any Person, all or any portion of its undertaking, property, assets, both real and personal, including for greater certainty any securities in a corporation or ownership interest in any entity;

“Purchase Money Obligations” means, with respect to a Person, indebtedness of the Person issued, incurred or assumed to finance all or part of the cost of acquiring any asset for the Person, other than shares, bonds and other securities, on constructing, installing or improving any real property or fixtures of the Person, provided that the indebtedness is issued, incurred or assumed at the time of such acquisition, construction, installation or improvement and does not exceed 100% of such costs;

“Recognized Stock Exchange” means the TSX or, if the Common Shares are not listed on the TSX, any other national securities exchange on which the Common Shares are then listed and posted for trading;

“Redemption Amount” has the meaning ascribed thereto in section 3.9;

“Redemption Date” means the date indicated by the Corporation in the Redemption Notice as being the date on which the Redemption Amount shall be paid and for greater certainty, shall be no earlier than the effective date of the transaction causing the Change of Control;

“Redemption Notice” has the meaning ascribed thereto in section 3.9;

“Repurchase Offer” has the meaning ascribed thereto in subsection 3.2(a);

“Repurchase Notice Period” has the meaning ascribed thereto in section 3.2(a);

“Responsible Officer of the Corporation” means the Chairman, the President, the Chief Executive Officer, the Chief Financial Officer, any Vice-President, the Secretary, any Assistant Secretary, or any other officer of the Corporation customarily performing functions similar to those performed by any of the above designated officers, and whose name, title and original signature appear on the Corporation’s most recent Certificate of Incumbency delivered to the Trustee;

“Rights” and **“Rights Plan”** have the meanings ascribed thereto in subsection 6.1(e);

“Share Repayment Right” has the meaning ascribed thereto in subsection 5.2(a);

“Stated Maturity” shall mean, with respect to any principal of or accrued interest on a Debenture, the fixed date or dates specified on which such principal or interest is due and payable;

“Subsidiary” in relation to any specified Person, shall mean (a) any corporation, association or other business entity a majority of the outstanding Voting Securities of which are beneficially owned, directly or indirectly, by or for such Person and/or by or for any Subsidiary or one or more of the other Subsidiaries of that Person (or a combination thereof), and (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are the Person or one or more Subsidiaries of that Person (or any combination thereof);

“Successor Corporation” shall have the meaning ascribed thereto in paragraph 13.1(a);

“Supplemental Indenture” shall have the meaning ascribed thereto in subsection 16.3;

“Taxes” has the meaning ascribed thereto in section 2.15(a);

“Tendered Debentures” has the meaning ascribed thereto in section 3.4(a);

“Termination of Trading” is deemed to have occurred if the Common Shares are not listed for trading on any Recognized Stock Exchange;

“Trading Day” means, with respect to any Recognized Stock Exchange or any other market for securities, any day on which such exchange or market is open for trading or quotation;

“Transfer Agent” shall mean Computershare Investor Services Inc. or other Person or Persons appointed as the transfer agent for the Common Shares, in such capacity, together with such Person’s or Persons’ successor from time to time in such capacity;

“Trustee” shall mean Computershare Trust Company of Canada until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, **“Trustee”** shall mean or include each Person who is then a Trustee hereunder;

“TSX” means the Toronto Stock Exchange;

“United States dollar” means the lawful currency of the United States of America;

“U.S. Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder;

“Voting Securities” means securities having under all circumstances voting power to elect at least a majority of the directors, managers or trustees of the corporation, association or other business entity, provided that securities which only carry the right to vote conditionally on the happening of an event shall not be considered to be Voting Securities nor shall any securities be deemed to cease to be Voting Securities solely by reason of a right to vote accruing to shares of another class or classes by reason of the happening of such event;

“Voting Shares” means a share conferring a right to vote in all circumstances or by reason of an event which occurred or is occurring, and includes a security convertible into such a share, as well as an option or a right which may be exercised to acquire such a share or security and in particular the Common Shares of the Corporation;

“Weighted Average Trading Price” means, with respect to any security on a stock exchange or quotation service during a specified period, the quotient obtained by dividing (i) the aggregate sale price of all such securities sold on such stock exchange or quotation service during such period by (ii) the total number of such securities sold on such stock exchange or quotation service during such period, as determined from time to time by the Board of Directors, or upon request of the Board of Directors, as determined by an Independent Member of the IIROC for such purpose;

“Written Order” means a written order or request, respectively, signed in the name of the Corporation by a Responsible Officer or director of the Corporation; and

all other terms which are used herein but not otherwise defined herein, and that are defined in the *Securities Act* (Ontario), either directly or by reference therein, shall have the meanings assigned to them therein.

1.2 Interpretation

- (a) Words importing the singular number shall include the plural and vice versa and words importing gender shall include the masculine, feminine and neuter genders.
- (b) The words “hereto”, “herein”, “hereof”, “hereby”, “hereunder”, and other words of similar import refer to this Indenture as a whole and not to any particular article, section, subsection, paragraph, clause or other part of this Indenture.
- (c) Except as otherwise provided herein, any reference in this Indenture to any act, statute, regulation, policy statement, instrument, agreement, or section thereof shall be deemed to be a reference to such act, statute, regulation, policy statement, instrument, agreement or section thereof as amended, re-enacted or replaced from time to time.

1.3 Accounting Terms

As used in this Indenture and in any certificate or other document made or delivered pursuant to this Indenture, accounting terms not defined in this Indenture, or in any such certificate or other document, and accounting terms partly defined in this Indenture or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under Canadian generally accepted accounting principles. To the extent that the definitions of accounting terms in this Indenture, or in any such certificate or other document are inconsistent with the meanings of such terms under Canadian generally accepted accounting principles, the definitions contained in this Indenture, or in any such certificate or other document shall prevail.

1.4 Headings and Table of Contents

The division of this Indenture, or any related document, into articles, sections, subsections, paragraphs, clauses and other subdivisions, 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 any such related document.

1.5 Section and Schedule References

Unless something in the subject matter or context is inconsistent therewith, references in this Indenture to articles, sections, subsections, paragraphs, clauses, other subdivisions, exhibits, appendices or schedules are to articles, sections, subsections, paragraphs, clauses, other subdivisions, exhibits, appendices or schedules of or to this Indenture.

1.6 Governing Law

This Indenture and each Debenture issued hereunder shall be governed by, and construed with, the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts.

1.7 Currency

Unless expressly provided to the contrary in this Indenture or in any Debenture, all monetary amounts in this Indenture or in such Debenture refer to United States Dollars.

1.8 Non-Business Days

Unless expressly provided to the contrary in this Indenture or in any Debenture, whenever any payment shall be due, any period of time shall 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 period of time shall begin or end and such calculation shall be made as of the day that is not a Business Day, but such actions shall be taken and such payment shall be made, as the case may be, on the next succeeding Business Day.

1.9 Time

Unless otherwise expressly stated in this Indenture or in any Debenture, all references to a time will mean Eastern Time. Time shall be of the essence in this Indenture.

1.10 Independence of Covenants

Each covenant contained in this Indenture shall be construed (absent an express provision to the contrary) as being independent of each other covenant, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant.

1.11 Form of Documents Delivered to Trustee

- (a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.
- (b) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

1.12

Acts of Holders

- (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may, alternatively, be embodied in and evidenced by the record of Debentureholders voting in favour thereof, either in person or by proxies duly appointed in writing, at any meeting of Debentureholders duly called and held in accordance with the provisions of Article 12, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such requisite instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Corporation. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the **“Act of Holders”** or the **“Act”** of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such Agent shall be sufficient for any purpose of this Indenture and, subject to section 11.1, conclusive in favour of the Trustee and the Corporation, if made in the manner provided in this section 1.12. The record of any meeting of Debentureholders shall be provided in the manner specified in section 12.7.
- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to such notary public or other officer the execution thereof. Where such execution is by a signer acting in a capacity, other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any manner that the Trustee deems sufficient.
- (c) If the Corporation or the Trustee shall solicit from the Debentureholders any Act, the Corporation or the Trustee, as the case may be, may, at its option, fix in advance a record date for the determination of Debentureholders entitled to take such Act, but the Corporation or the Trustee, as the case may be, shall have no obligation to do so. Any such record date shall be fixed at the Corporation's or the Trustee's discretion, as the case may be, provided that such record date shall be fixed on a date not more than 60 days prior to the Act. If such a record date is fixed, such Act may be sought or taken before or after the record date, but only the Debentureholders of record at the close of business on such record date

shall be deemed to be Debentureholders for the purpose of determining whether Holders of the requisite proportion of Debentures Outstanding have authorized or agreed or consented to such Act, and for that purpose the Debentures Outstanding shall be computed as of such record date.

- (d) Any Act of the Holder of any Debenture shall bind every future holder of the same Debenture and the Holder of every Debenture issued upon the registration of transfer thereof or in exchange therefore or in lieu thereof in respect of anything done, suffered or omitted by the Trustee or the Corporation in reliance thereon, whether or not notation of such action is made upon such Debenture.

1.13 Interest Payments and Calculations

- (a) All interest payments to be made under this Indenture or any Debenture shall be paid without allowance or deduction for deemed re-investment or otherwise, both before and after Maturity and before and after default and/or judgment, if any, until payment of the amount on which such interest is accruing, and, to the extent permitted by Applicable Law, interest will accrue on overdue interest.
- (b) For the purposes of the *Interest Act* (Canada), if in this Indenture or in any Debenture a rate of interest is or is to be calculated on the basis of a period which is less than a full calendar year, the yearly rate of interest to which such rate is equivalent is such rate multiplied by the actual number of days in the calendar year for which such calculation is made and divided by 365 days.
- (c) The rate of interest stipulated in this Indenture or in any Debenture will be calculated using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest.
- (d) In calculating interest under this Indenture or under a Debenture for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

1.14 English Language

The Corporation, the Trustee and, by their acceptance of Debentures and the benefits of this Indenture, the Holders acknowledge having consented to and requested that this Indenture, each Debenture and each document related hereto and thereto be drawn up in the English language only. *La Société, le fiduciaire des débentures et, par leur acceptation des débentures et des avantages de la présente convention, les porteurs, reconnaissent avoir accepté et demandé que la présente convention, chaque débenture et chaque document relié à celles-ci soient rédigés en langue anglaise.*

1.15 Successors and Assigns

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

1.16 Severability Clause

If any provision in this Indenture or in the Debentures shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.17 Benefits of Indenture

Nothing in this Indenture and in the Debentures, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any paying agent, any Person maintaining the record of the Debentureholders pursuant to section 2.14, Transfer Agent and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

1.18 Unclaimed Debentures

Subject to Applicable Law, all Debentures together with any interest thereon which remain unclaimed after a period of three calendar years from the Maturity Date shall be forfeited and shall revert to the Corporation.

1.19 Schedules

The following Schedules form part of this Indenture:

Schedule 2.2 – Form of Debenture

Schedule 2.2(c) – Principal Amount Grid

Schedule 3.9 – Form of Redemption Notice

Schedule 4.1(b) – Form of Conversion Notice

Schedule 5.2 – Form of Maturity Notice

Schedule 14.1 – Form of Guarantee

1.20 Benefits of Indenture through Trustee

For greater certainty, this Indenture is being entered into with the Trustee for the benefit of the Holders and the Trustee declares that it holds all rights, benefits and interests of this Indenture on behalf of and as the person holding the power of attorney of, the Holders and each such person who becomes a Holder of the Debentures from time to time.

ARTICLE 2 THE DEBENTURES

2.1 Limit of Issue and Designation of Debentures

The Debentures authorized to be issued hereunder shall consist of an aggregate principal amount of \$5,150,000 plus any amount in respect of PIK Interest thereon and shall be designated as **“5% Convertible Senior Unsecured Debentures due February 18, 2014”**. The Corporation may not issue any additional Debentures (other than PIK Debentures) under this Indenture.

2.2 Form and Terms of Debentures

- (a) The Debentures (other than PIK Debentures) shall be dated as of the Issue Date. The Debentures (including for greater certainty, the PIK Debentures) shall bear interest from and including the Issue Date at the rate of 5% per annum (after as well as before Maturity, default and judgment, with interest on overdue interest at the said rate), payable in equal semi-annual instalments in arrears on each Interest Payment Date, subject to section 2.3. The Debentures shall mature on the Maturity Date (unless redeemed or repurchased in accordance with this Indenture). Subject to the Share Repayment Right pursuant to subsection 5.2(a), the principal of the Debentures will be payable on the Maturity Date in lawful money of Canada against surrender thereof by the Holder at the Corporate Trust Office or at such place or places as may be designated by the Corporation for that purpose.
- (b) The Debentures shall be issued as fully registered Debentures in denominations of \$1,000 and integral multiples of \$1,000 except however that PIK Debentures shall be issued as fully registered Debentures in denominations equal to the applicable PIK Interest. The Debentures shall be issued as Definitive Debentures, or as a Global Debenture, and shall be convertible as provided for in Article 4.
- (c) The Debentures (including for greater certainty, any PIK Debentures) and the certificate of the Trustee endorsed thereon shall be substantially in the form set forth in Schedule 2.2 hereto, provided that if a Debenture is issued as a Global Debenture in accordance with section 2.11, it shall have appended thereto a principal amount grid in the form of Schedule 2.2(c), which shall be appropriately adjusted at such times as Debentures are converted or repurchased in accordance with the terms hereof and as required to reflect PIK Interest, if applicable.

2.3 Interest

- (a) Each Debenture issued hereunder, whether issued originally or in exchange for another Debenture and including PIK Debentures, shall bear interest from and including the Issue Date or from and including the last Interest Payment Date on which interest shall have been paid or made

available for payment on the Debentures then Outstanding, whichever shall be the later, to but excluding the earlier of:

- (i) the following Interest Payment Date;
- (ii) if purchased in accordance with section 3.1, the date of payment;
- (iii) if repurchased in accordance with section 3.2, the Fundamental Change Repurchase Date;
- (iv) if converted in accordance with section 4.1, the Conversion Date;
- (v) if redeemed in accordance with section 3.4, the 90% Redemption Date; and
- (vi) the Maturity Date;

as the case may be (the “**Interest Period**”), upon due presentation and surrender thereof for payment on or after the appropriate date. The first interest payment will include accrued interest from the Issue Date to, but excluding June 30, 2009 and will amount to \$18.08 per \$1,000 principal amount. Each subsequent payment on an Interest Payment Date will amount to \$25.00 per \$1,000 principal amount of Debenture. The interest payable in respect of an Interest Period other than an Interest Period that ends on an Interest Payment Date shall be calculated by multiplying the principal amount by the interest rate of 5% per annum, dividing the product so obtained by 365 days and multiplying the quotient by the actual number of days in the said Interest Period.

- (b) Accrued interest on the principal amount of the Debentures for each Interest Period will be paid, at the option of the Corporation, (i) in cash on each Interest Payment Date in accordance with sections 2.10 or section 2.12, as applicable, or (ii) subject to Applicable Law, including receipt of all applicable regulatory approvals (including approval of the TSX for the listing of the Common Shares issuable upon conversion of such PIK Interest or PIK Debentures, as the case may be) (x) by increasing the principal amount of each Debenture in an aggregate principal amount equal to such accrued interest (“**PIK Interest**”) for such Interest Period (rounded to the nearest whole dollar) on each Interest Payment Date or (y) issuing new Debentures (“**PIK Debentures**”) in an aggregate principal amount equal to the PIK Interest for the applicable Interest Period (rounded up to the nearest whole dollar) to each Holder of a Debenture on the Interest Record Date. Accrued interest on the principal amount of Debentures payable on a payment date referred to in section 2.3(a)(ii) to 2.3(a)(vi) shall be paid by the Corporation in cash in accordance with the terms hereof. If the Corporation elects to pay PIK Interest then the Corporation shall deliver a notice to the Trustee at least 10 Business Days before the applicable Interest Payment Date indicating that the accrued interest will be paid by PIK Interest. The Trustee shall promptly deliver a

corresponding notice to the Debentureholders. If the Trustee does not receive such notice within such time period, the Corporation will be deemed to have elected to pay the accrued interest by cash in accordance with the terms hereof.

- (c) The Debentures will accrue interest on the increased principal amount thereof from and after the applicable Interest Payment Date on which a payment of PIK Interest is made. Interest shall accrue on PIK Debentures issued pursuant to the Indenture from and including the date of issuance of such PIK Debentures. Any such PIK Debentures shall be issued on the same terms as the Debentures and shall constitute part of the same series of securities as the Debentures and will vote together as one series on all matters with respect to the Debentures. All references to Debentures herein shall include any PIK Debentures.

2.4 Prescription

The right of the Debentureholders to exercise their rights under this Indenture shall become void unless the Debentures are presented for payment within a period of three years from the Maturity Date, after which payment thereof shall be governed by the provisions of Article 10 hereof. The Corporation shall have satisfied its obligations under the Debentures upon irrevocable remittance to the Trustee for the account of the Debentureholders, upon repurchase, redemption, conversion or at the Maturity Date, of any and all consideration due hereunder in cash or by the delivery of Freely Tradeable Common Shares, subject to and in accordance with the provisions of this Indenture, and such remittance shall for all purposes be deemed a payment to the Debentureholders, and to that extent such Debentures shall thereafter not be considered as Outstanding and the Debentureholders shall have no right, except to receive payment out of the moneys so paid and deposited or Freely Tradeable Common Shares deposited upon surrender of its Debentures.

2.5 Issue of Debentures

Debentures in such aggregate principal amounts as the Board of Directors shall determine in accordance with the terms hereof and in lawful money of Canada, including PIK Debentures, shall be executed by the Corporation from time to time and, forthwith after such execution, shall be delivered to the Trustee and shall be certified by the Trustee and delivered to the Corporation in accordance with the terms of section 2.7. Other than as contemplated by subsection 2.8(b), the Trustee shall receive no consideration for the certification of Debentures.

2.6 Execution

- (a) The Debentures shall be executed on behalf of the Corporation by any two Responsible Officers of the Corporation. The signature of any of these officers on the Debentures may be manual or facsimile. Debentures bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Corporation shall bind the Corporation,

notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Debentures.

- (b) If Debentures are issued as Definitive Debentures, the Corporation shall provide to the Trustee a supply of certificates to evidence such Definitive Debentures in such form, in such amounts, bearing such distinguishing letters and numbers, and as at such times as are necessary to enable the Trustee to fulfil its responsibilities under this Indenture.

2.7 Certification by Trustee

- (a) At any time and from time to time after the execution and delivery of this Indenture, and in accordance with the terms hereof, the Corporation may deliver Debentures executed on behalf of the Corporation to the Trustee for certification, pursuant to a Corporation Order applicable thereto and evidence of compliance, if requested by the Trustee, in accordance with section 11.4 and Applicable Law. Upon receipt by the Trustee of a Corporation Order applicable to such Debentures and such evidence of compliance, the Trustee shall certify and deliver such Debentures in the manner specified in such Corporation Order, without receiving any consideration for such certification and delivery.
- (b) No Holder shall be entitled to any right or benefit under this Indenture with respect to a Debenture, and such Debenture shall not be valid or binding for any purpose, unless such Debenture has been certified by the Trustee, as evidenced by the manual signature of an authorized officer of the Trustee. Such certification upon any Debenture shall be conclusive evidence, and the only evidence, that such Debenture has been issued under this Indenture.
- (c) Debentures bearing the manual signature of an individual who was, at the time that such signature was affixed, an authorized signing officer of the Trustee, shall be valid and binding on the Trustee notwithstanding that such individual ceased to be an authorized signing officer of the Trustee prior to the delivery of such Debentures.
- (d) The certification by the Trustee 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 (except in respect of the due certification thereof and any other warranties implied by law) or as to the performance by the Corporation of its obligations under this Indenture and the Trustee shall in no respect be liable or answerable for the use made of the Debentures or any of them or of the proceeds thereof.

2.8 Registration of Exchanges

- (a) Debentures may be exchanged for one or more Debentures in an equal aggregate principal amount upon surrender of the Debentures to be exchanged at the specified office of the Trustee; provided, however, that

each Debenture issued in exchange for such original Debenture shall have a principal amount in an authorized denomination as provided for herein.

- (b) The Trustee may make a charge to reimburse itself for any stamp taxes or governmental charges required to be paid and a reasonable charge for their services and a reasonable sum per Debenture created and issued upon any exchange or transfer of Debentures effected by them. Payment of such charges will be made by the Person requesting the exchange or transfer as a condition precedent to such exchange or transfer.

2.9 Persons Entitled to Payment

- (a) Prior to due presentment for registration of transfer of any Debenture, the Corporation, the Trustee and any other Person, as the case may be, may treat the Person, as the case may be, in whose name any Debenture is registered in the applicable register (including in the case of a Global Debenture, the Depository or the nominee of such Depository in whose name such Global Debenture is registered) as the absolute and sole owner of such Debenture for all purposes including receiving payment of the principal of, and any premium, if any, interest or other amount on such Debenture, receiving any notice to be given to the Holder of such Debenture, and taking any Act of Holders with respect to such Debenture, whether or not any payment with respect to such Debenture shall be overdue, and none of the Corporation, the Trustee or any other Person, as the case may be, shall be affected by notice to the contrary.
- (b) Delivery of a Debenture to the Trustee by or on behalf of the Holder thereof shall, upon payment of such Debenture, be a valid discharge to the Corporation of all obligations evidenced by such Debenture. None of the Corporation, the Trustee or any other Person shall be bound to inquire into the title of any such Holder.
- (c) In the case of the death of one or more joint registered Holders of a Debenture, the principal of, and premium, if any, interest and any other amounts on such Debenture may be paid to the survivor or survivors of such registered Holders whose receipt of such payment, accompanied by the delivery of such Debenture, shall constitute a valid discharge to the Corporation and the Trustee.

2.10 Payment of Principal and Interest on Definitive Debentures

- (a) Subject to (i) repurchase, redemption or conversion pursuant to the terms hereof, and (ii) section 2.10(b), as payments in respect of interest on the Definitive Debentures become due, interest payable on the Definitive Debentures on an Interest Payment Date will be payable by the Corporation to the Holders thereof in whose names the Debentures are registered at the close of business on the Interest Record Date with respect to the applicable Interest Payment Date. No later than 12:00 p.m. on the day that is three Business Days preceding each Interest Payment Date, the

Corporation shall deliver sufficient funds by way of money order, certified cheque, bank draft or wire transfer to the Trustee to enable it to forward or cause to be forwarded by prepaid post, to the Holder in whose name any Debenture is registered at the close of business on the Interest Record Date with respect to the applicable Interest Payment Date, at his or her last address appearing on the relevant register, or in the case of joint Holders, to any (or all) Holder(s) whose name(s) appear(s) on such register, on the Interest Payment Date a cheque for such interest (less any withholding or other tax required by law to be deducted) payable to the order of such Holder or Holders and negotiable at par at any branch in Canada of such bank or banks as may be acceptable to the Trustee in its absolute discretion. The forwarding of such funds by the Corporation to the Trustee and the subsequent delivery of such funds by the Trustee to the Holders by cheque shall satisfy and discharge the Corporation's liability for payment of the interest on the Debentures to the extent of the sums represented thereby, plus the amount of any withholding or other tax deducted as aforesaid, unless such cheque is not paid at par on presentation; provided that in the event of the non-receipt of such cheque by the Holder, or the loss or destruction thereof, the Trustee on being furnished with reasonable evidence of such non-receipt, loss or destruction and indemnity reasonably satisfactory to it shall issue to such Holder a replacement cheque for the amount of such cheque. Notwithstanding the foregoing, if the Corporation is prevented by circumstances beyond its control (including, without limitation, any interruption in mail service) from making payment of any interest due on each Debenture in the manner provided above, the Corporation may make payment of such interest or make such interest available for payment in any other manner acceptable to the Trustee with the same effect as though payment had been made in the manner provided above.

- (b) The Corporation will evidence its obligation to pay PIK Interest in respect of the Definitive Debentures by either (i) increasing the aggregate principal amount of each Debenture by the amount of PIK Interest applicable thereto (rounded up to the nearest whole dollar), by notice to the Trustee as provided in section 2.3(b) or (ii) issuing PIK Debentures to each Holder in the aggregate amount of PIK Interest applicable to the Debentures held by such Holder (rounded up to the nearest whole dollar) in the form of Definitive Debentures in accordance with the terms hereof and delivering such PIK Debentures to the Holders. Any such increase in the principal amount of the Debenture shall be noted by the Trustee in the register of the Debentureholders maintained by the Trustee.
- (c) If a Debenture or a portion thereof is called or presented for repurchase, redemption, or conversion and the payment date or Conversion Date is subsequent to a Interest Record Date but prior to the related Interest Payment Date, interest accrued on such Debenture will be paid upon presentation and surrender of such Debenture to the Corporate Trust

Office up to but excluding the payment date or the Conversion Date, as the case may be.

- (d) Subject to the foregoing provisions of this section, each Debenture delivered upon the transfer of or in exchange for or in lieu of any other Debenture shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Debenture.

2.11

Book-Based System

- (a) In the event that all of the Outstanding Definitive Debentures are registered in the name of “CDS & Co.”, the Trustee may issue, in replacement of the Definitive Debentures, one or more permanent global security certificates in the form of the certificate set out in Schedule 2.2 hereto together with the legend provided for in subsection (b) and section 2.19, as applicable (the **“Global Debenture(s)”**). The Global Debenture(s) shall be held by, or on behalf of, the Depository as depository of the Participants in the Book-Based System and shall be registered in the name of “CDS & Co.” (or such other name as the Depository may use from time to time as its nominee for the purposes of the Book-Based System). In the event that all of the Outstanding Debentures are registered in the name of “CDS & Co.”, no Beneficial Holder will receive Definitive Debentures representing their beneficial ownership in Debentures unless the Corporation determines to terminate the Book-Entry Only Debentures. Where all of the Outstanding Definitive Debentures are represented by a Global Debenture, the Debentures represented thereby shall be deemed for the purposes hereof to have been issued as Book-Entry Only Debentures.
- (b) The Global Debenture(s) shall bear a legend in substantially the following form subject to modification as required by the Depository:

“UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”) TO NOVADAQ TECHNOLOGIES INC. (THE “ISSUER”) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS AN INTEREST HEREIN. THIS CERTIFICATE IS ISSUED PURSUANT TO A MASTER LETTER OF REPRESENTATIONS OF THE ISSUER TO CDS, AS SUCH LETTER MAY BE REPLACED OR AMENDED FROM TIME TO TIME.”

2.12 Payments of Principal and Interest for Book-Entry Only Debentures

- (a) Subject to Article 5 and section 2.12(b), as payments in respect of principal and interest on the Debentures represented by the Global Debenture(s) become due, the Corporation shall (except in cases of payments on Maturity, repurchase or conversion which shall be made only upon presentation and surrender of the Global Debenture(s)), no later than on the applicable Interest Payment Date or on the Maturity Date, as the case may be, at the option of the Corporation:
 - (i) deliver or cause to be delivered to the office of the Trustee at the Corporate Trust Office at or before 10:00 a.m. three Business Days before such Interest Payment Date or Maturity Date, a certified cheque for the amount of such payment payable on such Interest Payment Date or Maturity Date, as the case may be, to the order of the Trustee and negotiable at par, or
 - (ii) provide to the Trustee such payment by electronic funds transfer to an account designated by the Trustee, at or before 10:00 a.m. on the Business Day preceding such Interest Payment Date or Maturity Date, as the case may be, for all amounts due in respect of such principal and interest on the Debentures represented by the Global Debenture(s) to enable the Trustee to forward or cause to be forwarded such funds to the Depository for credit by the Depository to Participants' accounts.

The forwarding of such funds by the Corporation to the Trustee shall satisfy and discharge the Corporation's liabilities for payment of the accrued interest on the Global Debenture(s) to the extent of the sums represented thereby, unless such cheque is not paid at par on presentation.

Neither the Corporation nor the Trustee for any Debenture issued as a Global Debenture will be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Debenture or for maintaining, reviewing or supervising any records relating to such beneficial interests.

- (b) The Corporation will evidence its obligation to pay PIK Interest in respect of Debentures represented by Global Debentures by increasing the principal amount of such Global Debentures for the benefit of the accounts of Participants specified by the Depository or its nominee. Any such increase in the principal amount of the Global Debenture will be made by the Trustee or the Depository (at the direction of the Trustee).

2.13 Rank

The Debentures shall be direct unsecured senior obligations of the Corporation. The Debentures certified and issued under this Indenture rank *pari passu* with one another, in accordance with their tenor without discrimination, preference or

priority and, subject to statutory preferred exceptions, shall rank equally with all other present senior unsecured indebtedness of the Corporation. The Debentures shall be senior in right of payment to all of the Corporation's future subordinated indebtedness.

2.14

Register and Transfer

- (a) The Corporation shall cause to be kept by and at the principal office of the Trustee in the City of Toronto, Province of Ontario, a register, and in such other place or places by the Trustee, if any, as the Corporation with the approval of the Trustee may designate, branch registers, in which shall be entered the names and latest known addresses of the Debentureholders and the other particulars prescribed by law of the Debentures held by them respectively, all transfers of Debentures. Such registration shall be noted on the Debentures by the Trustee. No transfer of a Debenture shall be effective as against the Corporation unless made on one of the appropriate registers by the registered Holder or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, upon compliance with such requirements as the Trustee may prescribe, and unless such transfer shall have been duly noted on such Debenture by the Trustee; provided, that, (i) with respect to Debentureholders that are not employees, consultants or directors, or former employees, consultants or directors of the Corporation, no sale or transfer to any Person shall be made or become effective without the prior consent of the Corporation unless the proposed transferee is an Affiliate of the transferor Debentureholder, and (ii) no sale or transfer to a person in the United States shall be made or become effective unless prior to such sale or transfer the Corporation and the Trustee shall have been furnished, if requested by the Corporation or the Trustee, (x) an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Corporation confirming that that such sale or transfer is exempt from, or not subject to, the registration requirements of the U.S. Securities Act, and has been made in accordance with any applicable securities laws of any state of the United States and/or (y) a duly completed U.S. transferee certificate in the form attached hereto as Schedule 2.14;
- (b) With respect to Debentures issued as Book-Entry Only Debentures, the Corporation shall cause to be kept by and at the principal office of the Trustee in the City of Toronto, Province of Ontario, a central register in which shall be entered the name(s) and latest known address(es) of the Holder(s) of each Global Debenture (being the Depository, or its nominee, for such Global Debenture) and the other particulars prescribed by law of the Debentures held by it (them) and all transfers of Debentures. Notwithstanding any other provision of this Indenture, a Global Debenture may not be transferred by the registered holder thereof except through records maintained by CDS or its nominee in the following circumstances or as otherwise specified in a Board Resolution or Written Order:

- (i) a Global Debenture may be transferred by a Depository to a nominee of such Depository or by a nominee of a Depository to such Depository or to another nominee of such Depository or by a Depository or its nominee to a successor Depository or its nominee;
- (ii) a Global Debenture may be transferred at any time after the Depository for such Global Debenture (i) has notified the Corporation that it is unwilling or unable to continue as Depository for such Global Debenture or (ii) ceases to be eligible to be a Depository provided that at the time of such transfer the Corporation has not appointed a successor Depository for such Global Debenture;
- (iii) a Global Debenture may be transferred at any time after the Corporation has determined, in its sole discretion, to terminate the Book-Based System in respect of such Global Debenture and has communicated such determination to the Trustee in writing; and
- (iv) a Global Debenture may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Debentures issued as a Global Debenture, provided that at the time of such transfer the Trustee has not waived the Event of Default pursuant to Article 9.

2.15 Taxes

- (a) Any payments made by or on behalf of the Corporation or by or on behalf of a Guarantor under or with respect to the Debentures 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 imposed or levied by or on behalf of 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, excluding, in respect of a Holder or Beneficial Holder, branch profits taxes, franchise taxes and taxes imposed on net income or capital (collectively, “**Taxes**”), unless the Corporation, a Guarantor or any other payor is required to withhold or deduct Taxes by Applicable Law or by the interpretation or administration thereof by the relevant Governmental Authority. If the Corporation, or any other payor of any amount under or in respect of the Debentures (including any amount paid in respect of proceeds of disposition of the Debenture to a Debentureholder) is so required to withhold or deduct any amount for or on account of Taxes from any payment made under or with respect to the Debentures in respect of any such payment by the Corporation or a Guarantor, the Trustee will make such withholding or deduction and will remit the full amount withheld or deducted to the relevant Governmental Authority as and when required by Applicable Law.

- (b) Within 90 days after the date the payment of any Taxes is due pursuant to Applicable Law, the Trustee will furnish to the Corporation copies of tax receipts, if any, evidencing such payment by the Trustee.
- (c) At least 30 days prior to each date on which any payment under or with respect to the Debentures is due and payable, if the Corporation to its knowledge will be obligated to pay Taxes with respect to such payment, the Corporation will deliver to the Trustee an Officer's Certificate stating the fact that such Taxes will be payable and the amounts so payable and will set forth such other information necessary to enable the Trustee to pay such Taxes on the date payment is due.

2.16 Cancellation of Debentures

- (a) All Debentures surrendered for payment of the final amount required to be paid thereon, or that have been surrendered to the Trustee for registration of exchange or transfer, shall be promptly cancelled by the Trustee on receipt. The Trustee shall give prompt written notice to the Corporation of the particulars of any Debentures cancelled by it.
- (b) The Corporation may, in its discretion at any time, deliver to the Trustee for cancellation any Debentures which the Corporation has purchased as provided for in this Indenture, and all such Debentures so delivered shall be cancelled by the Trustee.
- (c) All Debentures which have been cancelled by the Trustee shall be destroyed by the Trustee in accordance with its standard practices, and the Trustee shall furnish to the Corporation a destruction certificate setting forth the numbers and denominations of the Debentures so destroyed.

2.17 Mutilated, Lost, Stolen or Destroyed Debentures

- (a) If any Debenture has been mutilated or defaced or has or has been alleged to have been lost, stolen or destroyed, then, on application by the applicable Holder to the Trustee, the Corporation may, in its discretion, execute, and upon such execution the Trustee shall certify and deliver, a new Debenture of the same date and amount as the defaced, mutilated, lost, stolen or destroyed Debenture in exchange for and in place of the defaced or mutilated Debenture, and in lieu of and in substitution for the lost, stolen or destroyed Debenture. Notwithstanding the foregoing, no Debenture shall be delivered as a replacement for any Debenture which has been mutilated or defaced otherwise than upon surrender of the mutilated or defaced Debenture, and no Debenture shall be delivered as a replacement for any Debenture which has been lost, stolen or destroyed unless the applicant for the replacement Debenture has furnished to the Corporation and the Trustee evidence, satisfactory in form and substance to the Corporation and the Trustee, of its ownership of, and of such loss, theft or destruction of, such Debenture and has provided such a surety bond and indemnity to the Corporation and the Trustee in amount, form

and substance satisfactory to each of them. Any instructions by the Corporation to the Trustee under this section shall include such indemnity for the protection of the Trustee as the Trustee may reasonably require.

- (b) If any mutilated, defaced, lost, stolen or destroyed Debenture has become or is about to become due and payable, the Corporation, in its discretion, may, instead of executing a replacement Debenture, pay to the Holder thereof the full amount outstanding on such mutilated, defaced, lost, stolen or destroyed Debenture.
- (c) Upon the issuance of a replacement Debenture, the Corporation may require the applicant for such replacement Debenture to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such issuance and any other expenses (including the fees and expenses of the Trustee and the Corporation) connected with such issuance.
- (d) Each replacement Debenture shall bear a unique serial number and be in a form otherwise identical to the Debenture it replaces and shall be entitled to the benefits of this Indenture to the same extent and in the same manner as the Debenture it replaces.
- (e) Unless the Corporation instructs otherwise, the Trustee shall, in accordance with its practice, destroy each mutilated or defaced Debenture surrendered to and cancelled by it and in respect of which a replacement Debenture has been delivered or moneys have been paid and shall, as soon as reasonably practicable, furnish to the Corporation a certificate as to such destruction specifying in numerical sequence the serial numbers of the Debentures so destroyed.

2.18

Access to Lists of Holders

- (a) The register of Debentureholders maintained by the Trustee will, at all reasonable times during the regular business hours of the Trustee, be open for inspection by the Corporation.
- (b) If any Beneficial Holder or group of Beneficial Holders, or such one or more Holders as may be permitted by Applicable Law (in each case, the “**Applicants**”) apply to the Trustee (with a copy to the Corporation), then the Trustee, after having been funded and indemnified to its reasonable satisfaction by such Applicants for its related costs and expenses, shall afford or shall cause the Corporation to afford the Applicants access during normal business hours to the most recent list of Debentureholders within 10 Business Days after the receipt of such application by the Trustee. Such list shall be as of a date no more than 10 days (or such other date as may be mandated by Applicable Law) prior to the date of receipt of the Applicants’ request.

2.19

Legend on Debentures

- (a) Each certificate representing the Debentures, the Common Shares issuable on or prior to June 18, 2009 upon conversion, repurchase or maturity of such Debentures, and each certificate issued in exchange therefor or in substitution therefor, or any ownership statement issued under the Book-Based System, shall bear the following legend (the “NI 45-102 Legend”), as applicable, unless otherwise directed by the Corporation:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE JUNE 18, 2009.”

- (b) In addition, each certificate representing the Debentures or the Common Shares issuable on conversion thereof that is or sold or transferred to a person in the United States shall, unless otherwise determined by the Corporation, bear the additional following legend:

“THE DEBENTURES AND UNDERLYING COMMON SHARES OF THE CORPORATION HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”), OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS DEBENTURE NOR THE UNDERLYING COMMON SHARES NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF WITHIN THE UNITED STATES IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT THIS DEBENTURE AND THE UNDERLYING COMMON SHARES AND ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 904 OF REGULATIONS UNDER THE U.S. SECURITIES ACT, (C) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144A UNDER THE U.S. SECURITIES ACT, (D) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144 UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE

UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION, PROVIDED THAT IN THE CASE OF OFFERS, SALES OR TRANSFERS PURSUANT TO CLAUSES (B), (D) OR (E) ABOVE, A LEGAL OPINION AND/OR CERTIFICATE OR OTHER CERTIFICATION SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED.”

**ARTICLE 3
REPURCHASE AND CANCELLATION OF DEBENTURES**

3.1 Purchase of Debentures

- (a) Provided that no Event of Default has occurred and is continuing, the Corporation may at any time and from time to time purchase all or any of the Debentures in the market (which shall include purchases from or through an investment dealer or a firm holding membership on a Recognized Stock Exchange) or by tender or by private contract, at any price, subject to compliance with Applicable Securities Laws. Debentures so purchased by the Corporation shall be submitted to the Trustee for cancellation in accordance with subsection 2.16(b). If an Event of Default has occurred and is continuing, the Corporation will not have the right to purchase by private contract.
- (b) If, upon an invitation for tenders, more Debentures than the Corporation is prepared to accept are tendered at the same lowest price, the Debentures to be purchased by the Corporation will be selected by the Trustee on a *pro rata* basis or in such other manner (which may include selection by lot, random selection by computer or any other method) as the Trustee considers appropriate, from the Debentures tendered by each tendering Debentureholder who tendered at such lowest price. For this purpose the Trustee may make, and may from time to time amend, regulations with respect to the manner in which Debentures may be so selected, and regulations so made shall be valid and binding upon all Debentureholders, notwithstanding the fact that as a result thereof one or more such Debentures becomes subject to purchase in part only. The Holder of any Debenture of which a part only is purchased upon surrender of such Debenture for payment, shall be entitled to receive, without expense to such Holder, a replacement Debenture for and evidencing the same obligation as the unpurchased part so surrendered, and the Trustee shall certify and deliver such replacement Debenture upon receipt of the Debenture so surrendered or, with respect to a Global Debenture. The Depository shall make notations on the Global Debenture of the principal amount thereof so purchased.

3.2 Repurchase of Debentures at Option of the Holder upon a Fundamental Change

- (a) If a Fundamental Change occurs prior to the Maturity Date, the Corporation shall, in compliance with Applicable Laws, make an offer to

the Debentureholders to repurchase for cash all of the outstanding principal amount of the Debentures of such Holder (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) at the Fundamental Change Repurchase Price (the “**Repurchase Offer**”) on the Fundamental Change Repurchase Date. As promptly as practicable following the date on which the Corporation announces the Fundamental Change transaction, but in no event less than 20 days prior to the anticipated effective date of a Fundamental Change, the Corporation shall mail a written notice of the Fundamental Change to the Trustee and to each Holder (and to beneficial Holders as required by Applicable Securities Laws) (the “**Fundamental Change Corporation Notice**”). The Fundamental Change Corporation Notice shall include the form of a Fundamental Change Repurchase Notice (as defined below) to be completed by the Holder and shall state the Repurchase Offer and the following:

- (i) the events causing such Fundamental Change;
- (ii) the date (or expected date) of such Fundamental Change;
- (iii) the last date by which the Fundamental Change Repurchase Notice must be delivered in accordance with section 3.2(b) in order to elect the repurchase option pursuant to this section 3.2;
- (iv) the Fundamental Change Repurchase Date;
- (v) the Fundamental Change Repurchase Price;
- (vi) the Holder’s right to require the Corporation to purchase all or a portion of the Debentures pursuant to the Repurchase Offer;
- (vii) the name and address of the Trustee;
- (viii) the then effective Conversion Price and Conversion Rate and any adjustments to the Conversion Rate resulting from such Fundamental Change
- (ix) the procedures that the Holder must follow to exercise conversion rights under Article 4 and that Debentures as to which a Fundamental Change Repurchase Notice has been given may be converted into Common Shares pursuant to Article 4 of this Indenture only to the extent that the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;
- (x) the procedures that the Holder must follow to exercise rights under this section 3.2;

- (xi) the procedures that the Holder must follow to withdraw a Fundamental Change Repurchase Notice;
- (xii) the existence of the 90% Redemption Right; and
- (xiii) that, unless the Corporation fails to pay such Fundamental Change Repurchase Price, Debentures covered by any Fundamental Change Repurchase Notice will cease to be outstanding and interest will cease to accrue on and after the Fundamental Change Repurchase Date.

At the Corporation's request, the Trustee shall give such Fundamental Change Corporation Notice in the Corporation's name, at the Corporation's expense, and within the notice period set out above; provided, that, in all cases, the text of such Fundamental Change Corporation Notice shall be prepared by the Corporation. If any of the Debentures are in the form of a Book-Entry Only Debentures, then the Corporation shall modify such notice to the extent necessary to accord with the applicable procedures at the Book-Based System relating to the purchase of Book-Entry Only Debentures.

- (b) A Holder may exercise its rights specified in section 3.2 upon delivery of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Book-Entry Only Debenture, may be delivered electronically or by other means in accordance with the Depository's applicable procedures) of the exercise of such rights (a **"Fundamental Change Repurchase Notice"**) to the Corporation and the Trustee at any time prior to the close of business on the Business Day prior the Fundamental Change Repurchase Date, subject to extension to comply with Applicable Laws (such period to be referred to as the **"Repurchase Notice Period"**).
 - (i) The Fundamental Change Repurchase Notice shall state: (A) the certificate number(s) (if such Debenture is held other than in global form) of the Debenture(s) which the Holder will deliver to be purchased (or, if the Debenture is a Book-Entry Only Debenture form, any other items required to comply with the applicable procedures), (B) the portion of the principal amount of the Debenture which the Holder will deliver to be purchased, and (C) that such Debenture shall be purchased as of the Fundamental Change Repurchase Date pursuant to the terms and conditions specified in the Debentures and in this Indenture.
 - (ii) The delivery of the Debenture(s) (if such Debenture is held other than in global form) for which a Fundamental Change Repurchase Notice has been timely delivered to the Trustee and not validly withdrawn prior to, on or after the Fundamental Change Repurchase Date (together with all necessary endorsements) at the

office of the Trustee shall be a condition to the receipt by the Holder of the Fundamental Change Repurchase Price therefore.

- (c) Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Fundamental Change Repurchase Notice contemplated by this section 3.2 shall have the right to withdraw such Fundamental Change Repurchase Notice in whole or in a portion thereof at any time prior to the close of business on the Business Day prior to the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Corporation and to the Trustee in accordance with the procedures set out in the Fundamental Change Corporation Notice or, if not set out therein, then in accordance with section 3.3.
- (d) The Trustee shall promptly notify the Corporation of the receipt by it of any Fundamental Change Repurchase Notice or written withdrawal thereof.
- (e) Anything herein to the contrary notwithstanding, in the case of Book-Entry Only Debentures, any Fundamental Change Repurchase Notice may be delivered or withdrawn and such securities may be surrendered or delivered for purchase in accordance with the applicable procedures of the Book-Based System as in effect from time to time.

3.3

Effect of Fundamental Change Repurchase Notice

- (a) Upon receipt by the Trustee of a properly completed Fundamental Change Repurchase Notice from a Holder, the Holder of the Debenture in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn as specified in section 3.3(b)), thereafter be entitled to receive the Fundamental Change Repurchase Price with respect to such Debenture, subject to there being no Event of Default then occurring including a continuation thereof (other than a default in the payment of the Fundamental Change Repurchase Price). The Fundamental Change Repurchase Price shall be paid to such Holder promptly following the later of (1) the Fundamental Change Repurchase Date and (2) the time of delivery of such Debenture to the Trustee by the Holder thereof in the manner required by section 3.2. Debentures in respect of which a Fundamental Change Repurchase Notice has been given by the Holder thereof may not be converted into Common Shares pursuant to Article 4 on or after the date of the delivery of such Fundamental Change Repurchase Notice unless such Fundamental Change Repurchase Notice has first been validly withdrawn in accordance with section 3.3(b) with respect to the Debentures to be converted.
- (b) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice (which may be delivered by mail, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Book-Entry Only Debentures, may be delivered electronically

or by other means in accordance with the applicable procedures of the Book-Entry Only System) of withdrawal delivered by the Holder to the Corporation and the Trustee at any time prior to the last day of the Repurchase Notice Period close of business on the Business Day immediately prior to the Fundamental Change Repurchase Date, specifying (1) the principal amount of the Debenture or portion thereof with respect to which such notice of withdrawal is being submitted, (2) if Definitive Debentures have been issued, the certificate number of the Debentures being withdrawn in whole or in withdrawable part (or if the Debentures are not Definitive Debentures, such written notice must comply with the applicable procedures of the Book-Entry Only System) and (3) the portion of the principal amount of the Debentures that will remain subject to the Fundamental Change Repurchase Notice.

3.4 **90% Redemption Right**

- (a) Provided that not less than ninety percent in aggregate principal amount of Debentures outstanding on the date that the Corporation provides the Fundamental Change Corporation Notice to the Trustee and the Debentureholders in accordance with section 3.2 of this Indenture (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) have been tendered for purchase (the “**Tendered Debentures**”) pursuant to a Fundamental Change Repurchase Notice(s) by the expiration of the Repurchase Notice Period, the Corporation shall have the right (but not the obligation) to give written notice to the Trustee and the Debentureholders (and beneficial Holders as required by Applicable Securities Laws) (the “**90% Redemption Notice**”) within 5 days following the expiration of the Repurchase Notice Period, of the redemption of all of the Debentures (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) remaining outstanding on the expiration of the Repurchase Notice Period after deduction of the Tendered Debentures at the 90% Redemption Price (the “**90% Redemption Right**”).
- (b) The 90% Redemption Notice shall specify the redemption date applicable thereto (which shall not be less than 5 days after the date of delivery of the 90% Redemption Notice) (the “**90% Redemption Date**”) and shall include a calculation of the amount payable to the Holders as payment of the 90% Redemption Price.
- (c) The 90% Redemption Price will be payable to each applicable Holder promptly following the later of (i) the 90% Redemption Date and (ii) the time of delivery of such debenture by the Holder thereof to the Trustee at the office of the Trustee in the manner required by section 3.2.

- (d) On or before 12:00 p.m. (noon) on the Business Day prior to the 90% Redemption Date, the Corporation shall deposit with the Trustee an amount of money (in immediately available funds if deposited on or after such 90% Redemption Date), sufficient to pay the aggregate 90% Redemption Price of all the Debentures being redeemed.
- (e) If a Trustee holds, in accordance with the terms hereof, money sufficient to pay the 90% Redemption Price of the aggregate amount of Debentures being redeemed in accordance with this section 3.4 then, on the Business Day following the 90% Redemption Date, such Debentures will cease to be outstanding, whether or not the Debentures are delivered to the Trustee, and interest shall cease to accrue, and the rights of the Holder in respect of the Debenture shall terminate (other than the right to receive the 90% Redemption Price as aforesaid).
- (f) If a 90% Redemption Date falls after a Interest Record Date and on or before the related Interest Payment Date, then interest on the Debentures payable on the 90% Redemption Date will be payable to the Holders in whose names the Debentures are registered at the close of business on such Interest Record Date.

3.5

Deposit of Fundamental Change Repurchase Price

- (a) On or before 12:00 p.m. (noon) on the Business Day prior to the applicable Fundamental Change Repurchase Date, the Corporation shall deposit with the Trustee an amount of money (in immediately available funds if deposited on or after such Fundamental Change Repurchase Date), sufficient to pay the aggregate Fundamental Change Repurchase Price of all the Debentures or portions thereof that are to be purchased as of such Fundamental Change Repurchase Date.
- (b) If a Trustee holds, in accordance with the terms hereof, money sufficient to pay the Fundamental Change Repurchase Price of any Debenture for which a Fundamental Change Repurchase Notice has been tendered and not withdrawn in accordance with this Indenture then, on the Business Day following the applicable Fundamental Change Repurchase Date, such Debenture will cease to be outstanding, whether or not the Debenture is delivered to the Trustee, and interest shall cease to accrue, and the rights of the Holder in respect of the Debenture shall terminate (other than the right to receive the Fundamental Change Repurchase Price as aforesaid). The Corporation shall publicly announce the principal amount of Debentures repurchased on or as soon as practicable after the Fundamental Change Repurchase Date.
- (c) The Trustee will promptly return to the respective Holders thereof any Debentures with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture.

- (d) If a Fundamental Change Repurchase Date falls after a Interest Record Date and on or before the related Interest Payment Date, then interest on the Debentures payable on the Fundamental Change Repurchase Date will be payable to the Holders in whose names the Debentures are registered at the close of business on such Interest Record Date.

3.6 Repayment to the Corporation

To the extent that the aggregate amount of cash deposited by the Corporation pursuant to section 3.3 or 3.4(a) exceeds the aggregate Fundamental Change Repurchase Price or the aggregate 90% Redemption Price, as applicable, of the Debentures or portions thereof that the Corporation is obligated to purchase or are being redeemed, as the case may be, then on the day following the Fundamental Change Repurchase Date or the 90% Redemption Date, as applicable, the Trustee shall return any such excess cash to the Corporation.

3.7 Debentures Purchased in Part

Any Debenture that is to be purchased only in part shall be surrendered at the office of the Trustee, and promptly after the Fundamental Change Repurchase Date, the Corporation shall execute and the Trustee shall authenticate and deliver to the Holder of such Debenture, without service charge, a new Debenture or Debentures, of such authorized denomination or denominations as may be requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Debenture so surrendered that is not purchased.

3.8 Optional Redemption of Debentures

- (a) Following the occurrence of a Change of Control, the Corporation shall, subject to Applicable Laws, have the right at its option to redeem all, but not less than all, of the Debentures, on not more than 30 days' and not less than 10 days' prior notice to the Holders at a redemption price equal to 110% of the principal amount of the Debentures to be redeemed (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable), plus accrued and unpaid interest thereon, if any, up to but excluding the Redemption Date. This redemption right shall not prejudice the right of Holders to convert Debentures to Common Shares at any time prior to Maturity as described in Article 4.
- (b) Concurrently with providing the Redemption Notice, the Corporation shall provide the Trustee with an Officer's Certificate setting forth the details of any redemption contemplated by this section 3.8 (including the eligibility and interest calculations, if necessary) which the Trustee may rely upon without any independent obligation to verify the accuracy of information set out therein.

3.9 Notice of Redemption

Notice of redemption of the Debentures (the **“Redemption Notice”**) shall be given by the Corporation to the Trustee and Holders in the form set forth in Schedule 3.9 hereof and in the manner provided in sections 15.2 and 15.3. Every such notice shall include, in reasonable detail, a description of the Change of Control transaction, including the date or expected date of such Change of Control, the aggregate Fundamental Change Repurchase Price as of the Redemption Date of all of the Debentures then Outstanding (the **“Redemption Amount”**), the Redemption Date, the places of payment and any right of the Holders to convert such Debentures as provided in Article 4, that interest upon the principal amount of Debentures called for redemption shall cease to be payable from and after the Redemption Date, and that the Debentures are to be purchased by the Corporation pursuant to the applicable provisions of the Debentures and the Indenture. If the Debentures are Book-Entry Only Debentures, the Redemption Notice must comply with the Book-Entry Only System. Any Redemption Notice shall be binding and irrevocable and, upon the giving of such notice the Maturity Date of the Debentures will be deemed to be the stated Redemption Date.

3.10 Debentures Due on Redemption Date

Upon a Redemption Notice being given in accordance with section 3.9, the Redemption Amount shall be and become due and payable on the Redemption Date specified in such Redemption Notice and with the same effect as if it were the Maturity Date of such Debentures, the provisions hereof or of any such Debentures notwithstanding, and, from and after such Redemption Date and the deposit of the Redemption Amount with the Trustee in accordance with section 3.11, interest shall cease to accrue and the Debentures shall cease to be Outstanding, whether or not a Debenture is delivered to the Trustee. Thereafter, all other rights of the Holder will terminate, other than the right to receive the Redemption Amount payable in respect of such Debentures upon presentation for surrender of such Debentures at any of the places specified in section 3.9 on or after the Redemption Date.

3.11 Deposit of Redemption Moneys

Upon the Debentures being called for redemption as provided for in section 3.9, the Corporation shall deposit with the Trustee or for the account of the Trustee, one Business Day prior to the Redemption Date specified in the Redemption Notice, such sums as are sufficient to pay the Redemption Amount of the Debentures. From the sums so deposited, the Trustee shall pay or cause to be paid to the Holders, upon surrender of the Debentures, the Redemption Amount thereof.

3.12 Places of Payment

The Redemption Amount will be payable promptly following presentation and surrender of the Debentures called for redemption, together with necessary

endorsements, at the Corporate Trust Office or at any other places specified in the Redemption Notice on or after the Redemption Date.

3.13 Compliance with Applicable Securities Laws upon Purchase of Debentures

In connection with any offer to purchase or redeem Debentures under section 3.2 or section 3.8, the Corporation shall comply with all Applicable Securities Laws in connection with such offer to purchase or purchase of Debentures, all so as to permit the rights of the Holders and obligations of the Corporation under this Article 3 to be exercised in the time and in the manner specified therein. To the extent that compliance with any such laws, rules and regulations would result in a conflict with any of the terms hereof, this Indenture is hereby modified to the extent required for the Corporation to comply with such laws, rules and regulations.

3.14 Cancellation of Purchased Debentures

All Debentures purchased or repurchased in whole or in part pursuant to this Article 3 shall be forthwith delivered to and cancelled by the Trustee and may not be reissued or resold and no Debentures shall be issued in substitution therefor.

ARTICLE 4 CONVERSION

4.1 Conversion Right

- (a) Each Holder shall have the right at any time prior to the close of business on the earlier of (i) the Business Day immediately preceding the Maturity Date or (ii) with respect to those Debentures for which a Holder shall have delivered a Fundamental Change Repurchase Notice, the Business Day immediately preceding the Fundamental Change Repurchase Date at its option to convert all or a portion of the principal amount of its Debentures (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) into Common Shares at the Conversion Rate in effect at such time, all on the terms and subject to the conditions provided in this Article 4, provided that the only shares issuable on conversion of the Debentures shall be shares that are “prescribed securities” as defined in Regulation 6208 of the *Income Tax Act* (Canada).
- (b) In order to exercise its option to convert provided pursuant to subsection (a), a Holder will be required to deliver to the Trustee at the Corporate Trust Office or any other place specified in the Maturity Notice or the Fundamental Change Corporation Notice, as the case may be, on or prior to the Business Day immediately preceding the Maturity Date or the Fundamental Change Repurchase Date, as the case may be, a conversion notice in the form set forth in Schedule 4.1(b) (the “**Conversion Notice**”) (with a copy to the Corporation), duly completed and executed by the

Holder or its executors, administrators or other legal representatives or its or their attorney duly appointed by instrument in form and execution satisfactory to the Trustee, together with the related Debentures. The Conversion Notice shall specify the date of conversion (the “**Conversion Date**”) of the applicable Debentures, which Conversion Date shall not be earlier than the date the Conversion Notice is delivered to the Trustee and shall not be later than the close of business on the Business Day immediately preceding the Maturity Date or the Fundamental Change Repurchase Date (with respect to Debentures being so repurchased), as the case may be.

- (c) Upon receipt of a Conversion Notice from the Holder, the Corporation shall ensure that the following conditions are met:
 - (i) the Common Shares to be issued on conversion by the Holder shall be issued from treasury of the Corporation, shall be Freely Tradeable, fully paid and non-assessable Common Shares, and shall be free of any Lien or adverse claim;
 - (ii) the Common Shares shall be listed and trading on a Recognized Stock Exchange;
 - (iii) the Corporation shall be a reporting issuer or equivalent in good standing or equivalent under Applicable Securities Laws in the Provinces of Canada in which the Corporation is currently a reporting issuer;
 - (iv) no Event of Default shall have occurred and be continuing; and
 - (v) the receipt by the Trustee of an Officer’s Certificate stating that conditions (i), (ii), (iii) and (iv) above have been satisfied and setting forth the number of Common Shares to be delivered for the principal amount of Debentures being so converted, plus the accrued and unpaid interest thereon, and the calculation of the Conversion Rate.

If the foregoing conditions are not satisfied prior to the close of business on the Business Day preceding the Conversion Date, the Corporation shall pay in cash the product of the Conversion Price multiplied by the principal amount of the Debentures in lieu of delivery of the Common Shares, unless such Debentureholder waives the conditions which are not satisfied or extends the time by which the Corporation is to satisfy such conditions.

4.2 Completion of Conversion

- (a) Subject to section 4.1, as promptly as practicable but no later than 5 Business Days after the Conversion Date, the Corporation shall deliver, or have the Transfer Agent deliver, to the Trustee on account of the Holder for delivery to each Holder who has elected to convert the Debentures held

by it pursuant to section 4.1, for the aggregate principal amount of Debentures which the Holder has elected to convert: (a) certificates for the Common Shares to which the Holder is entitled; (b) a certified cheque or bank draft in the amount of the value of a fractional Common Share, if any; (c) a certified cheque or bank draft in the amount of the accrued and unpaid interest thereon, and (d) if the Holder has elected to convert a principal amount of Debentures, together with the accrued and unpaid interest thereon (the “**exercised amount**”), which is less than the principal amount of all Debentures of which such person is the Holder immediately prior to such exercise (the “**registered amount**”), Debenture(s) registered in the name of such Holder in an aggregate principal amount equal to the amount by which the registered amount exceeds the exercised amount.

- (b) All Debentures converted in whole or in part pursuant to this Article 4 shall be forthwith delivered to and cancelled by the Trustee and the Trustee shall amend the register maintained by it accordingly.
- (c) The Corporation shall provide to the Trustee the certificates for the Common Shares and for the Debentures to be delivered pursuant to subsection (a), if any, and pay to the Trustee sufficient funds, by certified cheque or bank draft, in a timely manner, to permit the Trustee, on behalf of the Corporation, to make the delivery required by subsection (a) and any other payments, if any, required by section 4.3. Except as provided herein, Debentures which have been converted may not be reissued or resold.

4.3 Fractional Shares

No fractional Common Shares shall be delivered upon the conversion of Debentures but, in lieu thereof, if such a fraction shall become owing, the Corporation shall pay to the Holders, or to the Trustee on account of the Holders if necessary, at the time contemplated in subsection 4.2(a), the cash equivalent thereof determined on the basis of the current market value of the fractional share. The current market value of a fractional share shall be determined by the Corporation (calculated to the nearest 1/100th of a share) by multiplying the closing price of the Common Shares on the Trading Day immediately preceding the Conversion Date by such fractional share and rounding the product to the nearest whole cent.

4.4 Relating to the Issue of Common Shares

- (a) A Holder shall be treated as the shareholder of record of the Common Shares issued on due conversion of its Debentures and the issuance of Common Shares shall be deemed to have occurred, for all purposes, effective immediately after the close of business on the Conversion Date; such Holder shall be entitled to all substitutions therefor, all income earned thereon or accretions thereto and all dividends or distributions (including stock dividends and dividends or distributions in kind) thereon

and arising thereafter and in the event that the Trustee receives the same, it shall hold the same under gratuitous deposit for the benefit of such Holder.

- (b) The Corporation shall at all times reserve and keep available out of its authorized Common Shares (if the number thereof is or becomes limited) solely for the purpose of issue and delivery upon the conversion of Debentures, and shall issue to Debentureholders who may exercise their conversion rights hereunder such number of Common Shares as shall be issuable in such events.
- (c) The Corporation shall comply with all Applicable Securities Laws regulating the issue and delivery of Freely Tradeable Common Shares upon conversion of Debentures, shall obtain any regulatory approval in respect thereof as may be required pursuant to Applicable Securities Laws and shall cause to be listed and posted for trading such Common Shares on each Recognized Stock Exchange prior to the issuance thereof.

4.5 Legend on Common Shares

Each certificate representing Common Shares issued hereunder upon any conversion of Debentures, as well as all certificates issued in exchange for or in substitution therefor, shall bear, if issued prior to June 18, 2009, the NI 45-102 Legend set forth in section 2.19 and the additional following legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE (“TSX”); HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF THE TSX SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON TSX.”

In addition, each certificate representing the Common Shares that is issued or transferred to a person in the United States shall, unless otherwise determined by the Corporation, bear the additional following legend:

“THE COMMON SHARES OF THE CORPORATION HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT THIS SECURITY AND ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN

ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 904 OF REGULATIONS UNDER THE U.S. SECURITIES ACT, (C) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144A UNDER THE U.S. SECURITIES ACT, (D) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144 UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION, PROVIDED THAT IN THE CASE OF OFFERS, SALES OR TRANSFERS PURSUANT TO CLAUSES (B), (D) OR (E) ABOVE, A LEGAL OPINION AND/OR CERTIFICATE OR OTHER CERTIFICATION SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED.”

4.6 No Remuneration for Soliciting Conversions

The Corporation and the Trustee agree that no commission or other remuneration will be paid or given, directly or indirectly, to any person in connection with the solicitation of any conversion or exchange of the Debentures into or for the Common Shares.

ARTICLE 5 MATURITY

5.1 Payment of Principal and Interest at Maturity

On the Maturity Date, the Corporation shall pay to the Debentureholders all of the principal of the Debentures (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) and all accrued and unpaid interest thereto, up to but excluding the Maturity Date. Subject to section 5.2, payment of such principal and accrued and unpaid interest shall be made in cash or by cheque to the Holders in the manner contemplated by section 2.10 or 2.12, as the case may be.

5.2 Right to Repay Principal Amount in Common Shares at Maturity

- (a) The Corporation may, at its option and subject to Applicable Law, including receiving all applicable regulatory approvals and provided that no Event of Default shall have occurred and be continuing, elect to satisfy its obligation to repay on the Maturity Date the principal amount of all, but not less than all, of the Debentures (which shall include, for greater certainty, any increase in the aggregate principal amount of such

Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) by delivering to the Holders and the Trustee not less than 40 days and not more than 60 days prior to the Maturity Date a maturity notice in the form of Schedule 5.2 (the “**Maturity Notice**”) and, on the Maturity Date, by issuing and delivering to Holders that number of Freely Tradeable, fully paid and non-assessable Common Shares obtained by dividing the principal amount of Debentures (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest and the aggregate principal amount of any PIK Debentures issued with respect thereto, as applicable) by the product of (i) 95% of the Weighted Average Trading Price of the Common Shares on the TSX for the 20 consecutive Trading Days ending 5 Trading Days preceding the Maturity Date (the “**Share Repayment Right**”), which amount will be in Canadian dollars, multiplied by (ii) the Canadian-US Exchange Rate on the Maturity Date. Any accrued and unpaid interest shall be paid in cash in accordance with the terms hereof.

- (b) The Corporation shall be required to provide the Maturity Notice only if it elects to exercise the Share Repayment Right. The exercise by the Corporation of its Share Repayment Right shall not preclude a Holder from exercising its conversion rights in accordance with Article 4 at any time prior to the Business Day immediately preceding the Maturity Date.
- (c) The Corporation’s right to exercise the Share Repayment Right shall be conditional upon the following conditions being met on the Business Day immediately preceding the Maturity Date:
 - (i) the Common Shares to be issued on exercise of the Share Repayment Right shall be issued from treasury of the Corporation and shall be Freely Tradable, fully paid and non-assessable, and free from any Lien or adverse claim;
 - (ii) the Common Shares shall be listed and traded on a Recognized Stock Exchange;
 - (iii) the Corporation being a reporting issuer or equivalent in good standing or equivalent under Applicable Securities Laws in the Provinces of Canada in which the Corporation is currently a reporting issuer;
 - (iv) no Event of Default shall have occurred and be continuing;
 - (v) the receipt by the Trustee of an Officer’s Certificate stating that conditions (i), (ii), (iii) and (iv) above have been satisfied and setting forth the number of Common Shares to be delivered for each Debentureholder and the Current Market Price of Common Shares on the Maturity Date; and

- (vi) the receipt by the Trustee of an Opinion of Counsel to the effect that such Common Shares have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the principal amount of the Debentures outstanding, will be validly issued as fully paid and non-assessable and that conditions (i) and (ii) above have been satisfied.

If the foregoing conditions are not satisfied by the close of business on the Business Day preceding the Maturity Date, the Corporation shall pay in cash 100% of the principal amount of the Debentures that would otherwise have been satisfied in Common Shares, unless the Debentureholder waives the conditions which are not satisfied or extends the time by which the Corporation is to satisfy such conditions.

- (d) In the event that the Corporation exercises its Share Repayment Right, the Corporation shall on the Maturity Date deliver to the Trustee for delivery to and on account of the Holders (other than those holders who have exercised their Conversion Right in accordance with Article 4), certificates representing the Freely Tradeable Common Shares to which such Holders are entitled and a cheque representing all of the accrued and unpaid interest up to but excluding the Maturity Date. Upon presentation and surrender of the Debentures by a Holder for payment at Maturity at the Corporate Trust Office or any other place specified in the Maturity Notice, the Trustee shall deliver the certificates representing such Common Shares and the cheque representing all the accrued and unpaid interest and the cash equivalent representing the value of fractional shares, calculated in accordance with section 4.3, if any.
- (e) No fractional Common Shares shall be delivered upon the exercise of the Share Repayment Right but, in lieu thereof, if such a fraction shall become owing, the Corporation shall pay to the Trustee for the account of the Holders, at the time contemplated in subsection (d), the cash equivalent thereof calculated in accordance with section 4.3.
- (f) A Holder shall be treated as the shareholder of record of the Common Shares issued on due exercise by the Corporation of its Share Repayment Right effective immediately after the close of business on the Maturity Date, and shall be entitled to all substitutions therefor, all income earned thereon or accretions thereto and all dividends or distributions (including stock dividends and dividends or distributions in kind) thereon and arising thereafter, and in the event that the Trustee receives the same, it shall hold the same under gratuitous deposit for the benefit of such Holder.
- (g) The Corporation shall comply with all Applicable Securities Laws regulating the issue and delivery of Freely Tradeable Common Shares upon exercise of the Share Repayment Right, shall obtain any regulatory approval in respect thereof as may be required pursuant to Applicable Securities Laws and shall cause to be listed and posted for trading such

Common Shares on each Recognized Stock Exchange prior to the issuance thereof.

- (h) If the Corporation elects to satisfy its obligation to pay the principal amount of the Debentures by issuing Common Shares pursuant to the Share Repayment Right and the delivery of Common Shares to which a Holder is entitled is subject to withholding Taxes and the amount of cash for accrued and unpaid interest, if any, is insufficient to satisfy such Taxes, the Trustee, on the written direction of the Corporation but for the account of the Holder, shall sell, through the investment banks, brokers or dealers selected by the Corporation, out of the Freely Tradeable Common Shares issued by the Corporation for this purpose, such number of Freely Tradeable Common Shares that together with the cash for accrued and unpaid interest is sufficient to yield net proceeds (after payment of all costs) to cover the amount of Taxes required to be withheld and shall remit the same to the relevant Governmental Authority as and when required by Applicable Law. For greater certainty, the Trustee shall have no obligation whatsoever to initiate or establish sales of Common Shares or have any obligation whatsoever to canvas security or brokerage markets for sale prices on any Common Shares on behalf of the Corporation or any Holder, but the Trustee will assist the Corporation in the settlement of trades of Common Shares as set out above in this section 5.2(h) where the Corporation has initiated and established the sale through an investment bank or brokerage with which the Trustee is authorized, and physically capable, of settling such trades.
- (i) Each certificate representing Common Shares that is issued in payment to a person in the United States shall, unless otherwise determined by the Corporation, bear the legend set out in section 4.5.

ARTICLE 6 ADJUSTMENTS

6.1 Adjustment of Conversion Rate

The Conversion Rate shall be adjusted from time to time by the Corporation as follows:

- (a) If the Corporation pays a dividend or makes a distribution on outstanding Common Shares in Common Shares, the Conversion Rate in effect immediately prior to the record date for the determination of shareholders entitled to receive such dividend or other distribution shall be increased so that the same shall equal the rate determined by the Corporation by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which the numerator shall be the sum of the number of Common Shares outstanding at the close of business on such record date plus the total number of Common Shares constituting such dividend or other distribution and of which the denominator shall be the number of Common Shares outstanding at the close of business on such record date.

Such adjustment shall be made successively whenever any such dividend or distribution is made and shall become effective immediately after such record date. For the purpose of this subsection 6.1(a), the number of Common Shares at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation will not pay any dividend or make any distribution on Common Shares held in the treasury of the Corporation. If any dividend or distribution of the type described in this clause is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (b) If the Corporation subdivides its outstanding Common Shares into a greater number of shares, or combines its outstanding Common Shares into a smaller number of shares, the Conversion Rate in effect immediately prior to the day upon which such subdivision or combination becomes effective shall be, in the case of a subdivision of Common Shares, proportionately increased and, in the case of a combination of Common Shares, proportionately reduced. Such adjustment shall be made successively whenever any such subdivision or combination of the Common Shares occurs and shall become effective immediately after the date upon which such subdivision or combination becomes effective.
- (c) If the Corporation issues certain rights or warrants to all or substantially all holders of its outstanding Common Shares entitling them (for a period expiring within 45 days after such issuance) to subscribe for or purchase Common Shares (or securities convertible into Common Shares) at a price per share (or having a conversion price per share) less than the Current Market Price per Common Share (as determined in accordance with subsection 6.1(i)) on the record date for the determination of shareholders entitled to receive such rights or warrants, the Conversion Rate in effect immediately prior thereto shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which the numerator shall be the number of Common Shares outstanding at the close of business on such record date plus the number of additional Common Shares that such rights or warrants entitle holders thereof to subscribe for or purchase (or into which such convertible securities are convertible) and of which the denominator shall be the number of Common Shares outstanding at the close of business on such record date plus the number of shares which the aggregate offering price of the total number of Common Shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered for subscription or purchase, which shall be determined by multiplying the number of Common Shares issuable upon conversion of such convertible securities by the conversion price per Common Share pursuant to the terms of such convertible securities) would purchase at the Current Market Price per Common Share on such record date. Such adjustment shall be made successively whenever any such

rights or warrants (or convertible securities) are issued, and shall become effective immediately after such record date.

To the extent that Common Shares (or securities convertible into Common Shares) are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of Common Shares (or securities convertible into Common Shares) actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if the record date for the determination of shareholders entitled to receive such rights or warrants had not been fixed.

In determining whether any rights or warrants entitle the shareholders to subscribe for or purchase Common Shares at a price less than the Current Market Price per Common Share and in determining the aggregate offering price of the total number of Common Shares so offered, there shall be taken into account any consideration received by the Corporation for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

- (d) If the Corporation pays a dividend or other distribution to all or substantially all holders of its Common Shares, other than Common Shares or evidences of indebtedness or other assets of the Corporation, including securities (excluding (i) any issuance of rights or warrants for which an adjustment was made pursuant to Section 6.1(c), (ii) dividends or distributions in connection with a reclassification, consolidation, merger, combination, sale or conveyance resulting in a change in the conversion consideration pursuant to Section 6.5, or pursuant to any Rights Plan or (iii) any dividend or distribution paid exclusively in cash for which an adjustment was made pursuant to subsection 6.1(f)) (the **“Distributed Securities”**), then in each such case (unless the Corporation distributes such Distributed Securities for distribution to the Holders of Debentures on such dividend or distribution date as if each Holder had converted such Debenture into Common Shares immediately prior to the record date with respect to such distribution) the Conversion Rate in effect immediately prior to the record date fixed for the determination of shareholders entitled to receive such dividend or distribution shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which the numerator shall be the Current Market Price per Common Share on such record date and of which the denominator shall be Current Market Price per share on such record date less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officers’ Certificate delivered to the

Trustee) on such record date of the portion of the Distributed Securities so distributed applicable to one Common Share (determined on the basis of the number of Common Shares outstanding at the close of business on such record date). Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of shareholders entitled to receive such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

If the then fair market value (as so determined) of the portion of the Distributed Securities so distributed applicable to one Common Share is equal to or greater than the Current Market Price per Common Share on such record date, then in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of a Debenture shall have the right to receive upon conversion the amount of Distributed Securities so distributed that such Holder would have received had such Holder converted each Debenture on such record date. If the Board of Directors determines the fair market value of any distribution for purposes of this subsection 6.1(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Shares.

Notwithstanding the foregoing, if the securities distributed by the Corporation to all holders of its Common Shares consist of common shares of, or similar equity interests in, a Subsidiary or other business unit of the Corporation (the “**Spinoff Securities**”), the Conversion Rate shall be adjusted, unless the Corporation makes an equivalent distribution to the Holders of the Debenture, so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the record date fixed for the determination of shareholders entitled to receive such distribution by a fraction, the numerator of which shall be the sum of (A) the average Closing Price of one share of Common Shares over the ten 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 TSX or such other Recognized Stock Exchange on which the Common Shares are then listed or quoted and (B) the average of the Closing Prices over the Spinoff Valuation Period of the Spinoff Securities multiplied by the number of Spinoff Securities distributed in respect of one Common Share and the denominator of which shall be the average Closing Price of one Common Share over the Spinoff Valuation Period, such adjustment to become effective immediately prior to the opening of business on the fifteenth 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 Debentureholder would have received if such Debentures had been converted on the record date with respect to such distribution.

- (e) With respect to any rights or warrants (the **“Rights”**) that may be issued or distributed pursuant to any rights plan that the Corporation implements after the date of this Indenture (a **“Rights Plan”**), to the extent that such Rights Plan is in effect upon such conversion, the Holders of Debentures will receive, with respect to the Common Shares issued upon conversion, the Rights described therein (whether or not the Rights have separated from the Common Shares at the time of conversion), subject to the limitations set forth in and in accordance with any such Rights Plan; provided that, if, at the time of conversion, however, the Rights have separated from the Common Shares in accordance with the provisions of the Rights Plan so that Holders would not be entitled to receive any rights in respect of the Common Shares issuable upon conversion of the Debentures as a result of the timing of the Conversion Date, the Conversion Rate will be adjusted as if the Corporation distributed to all holders of Common Shares Distributed Securities constituting such rights as provided in the first paragraph of subsection 6.1(d), subject to appropriate readjustment in the event of the expiration, termination, repurchase or redemption of the Rights. Any distribution of rights or warrants pursuant to a Rights Plan complying with the requirements set forth in the immediately preceding sentence of this paragraph shall not constitute a distribution of rights or warrants pursuant to this section 6.1. Other than as specified in this subsection 6.1(e), there will not be any adjustment to the Conversion Rate as the result of the issuance of any Rights, the distribution of separate certificates representing such Rights, the exercise or redemption of such Rights in accordance with any Rights Plan or the termination or invalidation of any Rights.
- (f) If the Corporation, by dividend or otherwise, at any time distributes (a **“Triggering Distribution”**) to all holders of its Common Shares a payment consisting exclusively of cash (excluding any dividend or distribution in connection with the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary), the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying such Conversion Rate in effect immediately prior to the close of business on the record date for such Triggering Distribution (a **“Determination Date”**) by a fraction of which the numerator shall be such Current Market Price per Common Share on the Determination Date and the denominator of which shall be the Current Market Price per Common Share on the Determination Date less the amount of such cash dividend or distribution applicable to one Common Share (determined on the basis of the number of Common Shares outstanding at the close of business on the Determination Date), such increase to become effective immediately prior to the opening of business on the day following the date

on which the Triggering Distribution is paid. If the amount of cash dividend or distribution applicable to one Common Share is equal to or greater than the Current Market Price per Common Share on the Determination Date, then in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of a Debenture shall have the right to receive upon conversion the amount of cash so distributed that such Holder would have received had such Holder converted each Debenture on such Determination Date. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (g) If any issuer bid made by the Corporation or any of its Subsidiaries for all or any portion of Common Shares expires, then, if the issuer bid shall require the payment to shareholders of consideration per Common Share having a fair market value (determined as provided below) that exceeds the Closing Price per Common Share on the Trading Day next succeeding the last date (the “**Expiration Date**”) deposits could have been made pursuant to such issuer bid (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the “**Expiration Time**”), the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Expiration Date by a fraction of which the numerator shall be the sum of (A) the fair market value of the aggregate consideration (the fair market value as determined in good faith by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officers’ Certificate delivered to the Trustee) payable to shareholders based on the acceptance (up to any maximum specified in the terms of the issuer bid) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the “**Purchased Shares**”) and (B) the product of the number of Common Shares outstanding (less any Purchased Shares and excluding any shares held in the treasury of the Corporation) at the Expiration Time and the Closing Price per share of Common Share on the Trading Day next succeeding the Expiration Date and the denominator of which shall be the product of the number of Common Shares outstanding (including Purchased Shares but excluding any shares held in the treasury of the Corporation) at the Expiration Time multiplied by the Closing Price per share of the Common Shares on the Trading Day next succeeding the Expiration Date, such increase to become effective immediately prior to the opening of business on the day following the Expiration Date. In the event that the Corporation is obligated to purchase shares pursuant to any such issuer bid, but the Corporation is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate which would have been in effect based upon the

number of shares actually purchased, if any. If the application of this subsection 6.1(g) to any issuer bid would result in a decrease in the Conversion Rate, no adjustment shall be made for such issuer bid under this subsection 6.1(g).

- (h) For purposes of this section, the term “**issuer bid**” shall mean and include both issuer bids and exchange offers, all references to “**purchases**” of shares in issuer bids (and all similar references) shall mean and include both the purchase of shares in issuer bids and the acquisition of shares pursuant to exchange offers, and all references to “**tendered shares**” (and all similar references) shall mean and include shares tendered in both issuer bids and exchange offers.
- (i) For purposes of any computation under this section, “**Current Market Price**” shall mean the volume weighted average price per Common Share for each of the five consecutive trading days ending on the third trading day prior to the date in question.

For purposes of any computation under subsection 6.1(g), if the “ex” date for any event (other than the issuer bid that is the subject of the adjustment pursuant to subsection 6.1(g)) that requires an adjustment to the Conversion Rate pursuant to subsection 6.1(a), (b), (c), (d), (e), (f) or (g) occurs on the date of the Expiration Time for the tender or exchange offer requiring such computation or on the Trading Day next following the Expiration Time, the Closing Price for each Trading Day on and after the “ex” date for such other event shall be adjusted by dividing such Closing Price by the reciprocal of the fraction by which the Conversion Rate is so required to be adjusted as a result of such other event. For purposes of this subsection 6.1(i) the term “ex” date, when used:

- (1) with respect to any issuance or distribution, means the first date on which the Common Shares trade “regular way” on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution;
- (2) with respect to any subdivision or combination of Common Shares, means the first date on which the Common Shares trade “regular way” on such exchange or in such market after the time at which such subdivision or combination becomes effective, and
- (3) with respect to any tender or exchange offer, means the first date on which the Common Shares trade regularly on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this section 6.1, such

adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this section 6.1 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors and evidenced by an Officers' Certificate delivered to the Trustee.

In any case in which this section 6.1 shall require that an adjustment be made following a record date, a Determination Date or Expiration Date, as the case may be, established for the purposes specified in this section 6.1, the Corporation may elect to defer (but only until five Business Days following the filing by the Corporation with the Trustee of the certificate described in section 6.3) issuing to the Holder of any Debenture converted after such record date, Determination Date or Expiration Date the Common Shares of the Corporation issuable upon such conversion over and above the Common Shares (or other cash, property or securities, as applicable) issuable upon such conversion only on the basis of the Conversion Rate prior to adjustment; and, in lieu of any cash, property or securities the issuance of which is so deferred, the Corporation shall issue or cause its transfer agents to issue due bills or other appropriate evidence prepared by the Corporation of the right to receive such cash, property or securities. If any distribution in respect of which an adjustment to the Conversion Rate is required to be made as of the record date, Determination Date or Expiration Date therefore is not thereafter made or paid by the Corporation for any reason, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect if such record date had not been fixed or such record date, Determination Date or Expiration Date had not occurred.

For purposes of this section 6.1, "**record date**" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares have the right to receive any cash, securities or other property or in which the Common Shares (or other applicable security) is exchanged or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders entitled to receive such cash, security or other property (whether or not such date is fixed by the Board of Directors or by statute, contract or otherwise).

If one or more event occurs requiring an adjustment be made to the Conversion Rate for a particular period, adjustments to the Conversion Rate shall be determined by the Corporation's Board of Directors to reflect the combined impact of such Conversion Rate adjustment events, as set out in this section 6.1, during such period.

6.2 No Adjustment

- (a) Subject to approval of the TSX, no adjustment in the Conversion Rate shall be required if Holders may participate in the transactions set forth in section 6.1 above (to the same extent as if the Debentures had been

converted into Common Shares immediately prior to such transactions) without converting the Debentures held by such Holders. Any such participation in a transaction will be subject to the prior approval of the TSX.

- (b) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Rate as last adjusted; provided, however, that any adjustments which would be required to be made but for this section 6.2(b) shall be carried forward and taken into account in any subsequent adjustment. The Corporation shall adjust for any carry forward amount upon conversion regardless of the 1% threshold. All calculations under this Article 6 shall be made to the nearest cent or to the nearest one-ten thousandth of a share, as the case may be, with one half cent and 0.00005 of a share, respectively, being rounded upward.
- (c) No adjustment in the Conversion Rate shall be required for issuances of Common Shares pursuant to a Corporation plan for reinvestment of dividends or interest. Except as expressly provided in Section 6.1, no adjustment in the Conversion Rate shall be required for issuances of Common Shares or any securities convertible into, exercisable into or exchangeable for Common Shares, including the issuance of Common Shares or options to purchase Common Shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Corporation, upon the issuance of Common Shares pursuant to any option, warrant or right, or exercise of any exchangeable or convertible security outstanding as of the Issue Date, and repurchases by the Corporation of Common Shares not expressly discussed in this Article 6.
- (d) To the extent that the Debentures become convertible into the right to receive cash, no adjustment need be made thereafter as to the cash.

6.3 Notice of Adjustment

Whenever the Conversion Rate or conversion privilege is required to be adjusted pursuant to this Indenture, the Corporation shall promptly mail to Holders a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Failure to mail such notice or any defect therein shall not affect the validity of any such adjustment. Unless and until the Trustee shall receive an Officers' Certificate setting forth an adjustment of the Conversion Rate, the Trustee may assume without inquiry that the Conversion Rate has not been adjusted and that the last Conversion Rate of which it has knowledge remains in effect.

6.4 Notice of Certain Transactions

In the event that there is a dissolution or liquidation of the Corporation, the Corporation shall mail to Holders and file with the Trustee a notice stating the

proposed effective date. The Corporation shall mail such notice at least 10 days before such proposed effective date. Failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in this section 6.4.

6.5 Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.

If any of following events occur (each, a “**Business Combination**”):

- (a) any recapitalization, reclassification or change of the Common Shares, other than changes resulting from a subdivision or a combination,
- (b) a consolidation, amalgamation, merger or combination involving the Corporation,
- (c) a sale, conveyance or lease to another corporation of all or substantially all of the property and assets of the Corporation, other than one or more of the Corporation’s Subsidiaries, or
- (d) any statutory share exchange,

in each case as a result of which holders of Common Shares are entitled to receive shares, other securities, other property or assets (including cash or any combination thereof) with respect to or in exchange for Common Shares, the Corporation or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with Applicable Laws as in force at the date of execution of such supplemental indenture) providing that the Holders of the Debentures then outstanding will be entitled thereafter to convert such Debentures into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such Business Combination had such Debentures been converted into Common Shares immediately prior to such Business Combination.

In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in such Business Combination, the Debentures will be convertible into the weighted average of the kind and amount of consideration received by the holders of the Common Shares that affirmatively make such an election. The Corporation may not become a party to any such transaction unless its terms are consistent with this section 6.5. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 6. If, in the case of any such Business Combination, the stock or other securities and assets receivable thereupon by a holder of Common Shares includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such Business Combination, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Debentures as the Board of Directors shall reasonably consider necessary by

reason of the foregoing, including to the extent practicable the provisions providing for the repurchase rights set forth in Article 3 hereof. Notwithstanding anything contained in this Section, and for the avoidance of doubt, this Section shall not affect the right of a Holder to convert its Debentures into Common Shares prior to the effective date of the Business Combination in accordance with the terms of this Indenture.

6.6 Voluntary Increase

Subject to approval of the TSX, the Corporation from time to time may increase the Conversion Rate, to the extent permitted by law, by any amount for any period of time if the period is at least 20 days, if its Board of Directors has made a determination that this increase would be in the Corporation's best interests, and the Corporation provides 15 days' prior written notice of any increase in the Conversion Rate to the Trustee and Holders. The Corporation may also make such an increase to the Conversion Rate as the Board of Directors determines would avoid or diminish Canadian federal income tax to holders of Common Shares in connection with a dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for Canadian federal income tax purposes.

6.7 Notice of Expiry of Conversion Right

The Corporation covenants that, so long as any Debentures remain Outstanding, it will give notice to the Trustee on account for the Debentureholders in the manner provided in Article 15, not less than 30 days prior to the Maturity Date or the Fundamental Change Repurchase Date, as the case may be, of the expiry of the right of the Holders of the Debentures to convert their Debentures pursuant to subsection 4.1(a).

6.8 Protection of Trustee

The Trustee 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 Rate, 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; and shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any shares or other securities or other property which may at any time be issued or delivered upon the conversion of any Debenture; and the Trustee, except to the extent that there has been a failure by the Trustee or its employees or Agents to act honestly and in good faith or where the Trustee or its employees or agents have acted negligently or in wilful disregard of their obligations hereunder or shall not have complied with Article 11, shall not be responsible for any failure of the Corporation to make any cash payment or to issue, transfer or deliver Common Shares or share certificates upon the surrender of any Debenture for the purpose of conversion, or to comply with any of the covenants contained in this Article 6.

ARTICLE 7 NEGATIVE COVENANTS

7.1 Limitation on Additional Indebtedness

Without the consent of the Holders of not less than a majority in aggregate principal amount of the Debentures then Outstanding, the Corporation shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “**incur**”) any Indebtedness other than:

- (a) the Debentures;
- (b) trade payables incurred by the Corporation or any Subsidiary in the ordinary course of business;
- (c) Purchase Money Obligations in an aggregate amount not greater than \$1,000,000 in any Fiscal Year; and
- (d) Inter-company Indebtedness between the Corporation and a Guarantor.

7.2 Limitation on Dividends

Without the consent of the Holders of not less than a majority in aggregate principal amount of the Debentures then Outstanding, the Corporation shall not pay any dividends on its Common Shares.

7.3 Negative Pledge

Without the consent of the Holders of not less than a majority in aggregate principal amount of the Debentures then Outstanding, none of the Corporation or its Subsidiaries will create, incur, assume or suffer to exist any Lien on their present or future property or assets, except for Permitted Liens.

7.4 Limitation on Acquisitions

Without the consent of the Holders of not less than a majority in the aggregate of the principal amount of Debentures Outstanding, the Corporation shall not make any Acquisition.

7.5 Limitation on Dispositions

Without the consent of the Holders of not less than a majority in the aggregate of the principal amount of Debentures Outstanding, the Corporation shall not sell, transfer or otherwise dispose of any of its Property, whether now owned or hereafter acquired, except that the Corporation may:

- (a) sell in the normal course of its business, for the purpose of carrying on the same, for fair market value, in accordance with customary trade terms, any Property that would reasonably be considered to be the subject matter of

sales by it in the normal course of its business for the purpose of carrying on the same; or

- (b) sell, transfer or otherwise dispose of any Property that is worn out or obsolete or of no material value.

7.6 Limitation on Amendments to Constitutional Documents

Without the consent of the Holders of not less than a majority in the aggregate of the principal amount of Debentures Outstanding, the Corporation shall not amend the articles, bylaws or other constitutional documents of the Corporation.

ARTICLE 8 COVENANTS OF THE CORPORATION

8.1 Payment of Principal, Premium and Interest

The Corporation covenants and agrees with the Trustee and for the benefit of the Holders of each Debenture that it will duly and punctually pay the principal of (and premium, if any), and interest on the Debentures in accordance with their terms and this Indenture. For purposes of this Indenture, PIK Interest shall be considered paid on the date due if the Trustee is directed on or prior to such date to issue PIK Debentures or to increase the principal amount of the applicable Debentures, in each case, in an amount equal to the amount of the PIK Interest.

8.2 Corporate Existence; Books of Account

The Corporation covenants and agrees with the Trustee for the benefit of each Holder that:

- (a) it will at all times maintain its corporate existence; and
- (b) it will keep or cause to be kept proper books of account in accordance with Canadian generally accepted accounting principles.

8.3 Compliance Certificate

The Corporation shall deliver to the Trustee within 90 days after the end of each fiscal year of the Corporation (and at any other reasonable time upon demand by the Trustee) beginning with the fiscal year ended December 31, 2009, an Officer's Certificate stating that the Corporation has complied with all requirements of the Corporation contained in this Indenture and stating whether or not a Default or an Event of Default has occurred. If a Default or an Event of Default shall have occurred, the certificate shall describe the nature and particulars of the Default or Event of Default and its current status and steps taken or proposed to be taken to eliminate such circumstances and remedy such Default or Event of Default, as the case may be.

8.4 Notice of Default

The Corporation will promptly notify the Trustee upon becoming aware of the occurrence of any Default or Event of Default.

8.5 Securities Laws

The Corporation represents, warrants and covenants and agrees with the Trustee for the benefit of the Holders that:

- (a) it will take all reasonable steps and actions and do all such acts and things as may be required to: (i) as long as it meets the minimum listing requirements of such institutions, maintain the listing and posting for trading of the Common Shares on a Recognized Stock Exchange, and (ii) following the confirmation required pursuant to section 8.5(b), maintain its status as a reporting issuer or equivalent in good standing or equivalent under the Applicable Securities Laws in the Provinces of Canada in which the Corporation is currently a reporting issuer or equivalent;
- (b) it is a reporting issuer or equivalent in good standing under Applicable Securities Laws in each of the Provinces of Canada and that it is not named in any list of defaulting reporting issuers maintained pursuant to Applicable Securities Laws in such provinces; and
- (c) it will, at the relevant times and upon exercise of the relevant rights or elections, comply and take all measures necessary to comply at all times with subsections 4.1(c) and 5.2(c) including, without limitation, make application for any order, ruling, registration or filing or give any notice required under Applicable Securities Laws.

The Trustee shall have no obligation to verify information relating to the Corporation's compliance with this section 8.5 and may act and rely upon all information provided by the Corporation with respect to such compliance, without independent inquiry.

8.6 Reporting

- (a) The Corporation shall file with the Trustee and provide Holders with an annual information form and the continuous disclosure documents that must be sent to its shareholders pursuant to Applicable Securities Laws in the Provinces of Canada in which the Corporation is a "reporting issuer" (as such term is defined in such Applicable Securities Laws) within 15 days from the date such documents are required to be filed with Canadian securities regulatory authorities pursuant to Applicable Securities Laws.
- (b) The Corporation shall provide to the Trustee, the Holders and, upon request, the Beneficial Holders, (i) as soon as available and in any event

not later than 30 days after the commencement of each Fiscal Year, the annual budget of the Corporation for such Fiscal Year, and (ii) as soon as available, any amendments thereto.

- (c) In the event the Corporation is not subject to the continuous disclosure requirements of Applicable Securities Laws, the Corporation shall continue to provide to the Trustee, the Holders, and, upon request, Beneficial Holders, (a) within 90 days after the end of each fiscal year, copies of its annual financial statements and related management's discussion and analysis ("MD&A"), and (b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, interim financial statements and related MD&A which shall, at a minimum, contain such information required to be provided in such documents pursuant to Applicable Securities Laws in the Provinces of Canada in which the Corporation is, as of the date hereof, a "reporting issuer" (as such term is defined in such Applicable Securities Laws). Each of such continuous disclosure documents will be prepared in accordance with disclosure requirements of Applicable Securities Laws of the Provinces of Canada in which the Corporation is currently a "reporting issuer" (as such term is defined in such Applicable Securities Laws) and Canadian generally accepted accounting principles.
- (d) In the event the Corporation is not subject to the continuous disclosure requirements of Applicable Securities Laws, the Corporation undertakes to do the following:
 - (i) hold a quarterly conference call to discuss the quarterly and annual information contained in the disclosure documents provided in subsection 8.6(c) no later than five Business Days from the time the Corporation furnishes such documents to the Trustee;
 - (ii) no fewer than three Business Days prior to the date of the conference call required to be held in accordance with section 8.6(d)(i), issue a press release to the appropriate wire service for broad dissemination in Canada announcing the time and date of such conference call and directing the Beneficial Holders, prospective investors and securities analysts to contact the investor relations office of the Corporation to obtain the reports and information and instructions regarding how to access such conference call; and
 - (iii) either:
 - (1) maintain an unrestricted public website to which Beneficial Holders, prospective investors and securities analysts are given access and to which the continuous disclosure documents described in Section 8.6(c) and conference call access details are posted, or

- (2) maintain a non-public website to which beneficial owners of the Debentures, prospective investors and securities analysts are given access and to which the reports and conference call access details are posted, or
- (3) distribute via e-mail such reports and conference call details to Beneficial Holders, prospective investors and securities analysts who request to receive such distributions.

8.7 Performance of Covenants by Trustee

If the Corporation fails to perform any of its covenants contained in this Indenture, the Trustee may itself perform any of such covenants capable of being performed by it, but will be under no obligation to do so. All sums expended or advanced by the Trustee for such purpose will be repayable as provided in section 8.8 of the Indenture. No such performance or advance by the Trustee shall relieve the Corporation of any default hereunder or its continuing obligations hereunder.

8.8 Payment of Trustee's Remuneration

The Corporation will pay on demand the Trustee's reasonable remuneration for its services as Trustee hereunder (including reimbursement for distributions which include legal services) and will repay to the Trustee on demand all moneys which shall have been paid by the Trustee out of its own funds in and about the execution of the trusts hereby created with interest at such reasonable rate as shall have been agreed to by the Trustee from time to time, from the date of expenditure until repayment. The said remuneration shall continue to be payable until the trusts hereof are finally wound up and whether or not the trusts of this Indenture shall be in course of administration by or under the direction of the court. This Section 8.8 shall survive the resignation of the Trustee or the termination of this Agreement. Notwithstanding the foregoing, the Corporation need not pay or reimburse the Trustee for expenses, disbursements or advances if the Trustee incurred such expenses, disbursements or advances as a result of its wilful misconduct, bad faith or gross negligence. Any amount owing under this Section and unpaid thirty (30) days after request for such payment will bear interest from the expiration of such thirty (30) days at a rate per annum equal to the then current rate charged by the Trustee on similar accounts, payable on demand.

8.9 Further Instruments and Acts

Upon request of the Trustee, the Corporation will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default and Enforcement

- (a) If and when any one or more of the following events (herein called an **“Event of Default”**) shall happen with respect to the Debentures, namely:
 - (i) a default in payment of any principal amount or any purchase price, or Fundamental Change Repurchase Price with respect to the Debentures, when the same becomes due and payable;
 - (ii) a default in payment of interest on any Debentures when due and payable and the continuance of such default for 30 days;
 - (iii) a default in the observance of the covenant contained in subsection 8.5 and the continuance of such default for 10 Business Days;
 - (iv) default in the delivery to any Holder when due of Common Shares and any cash payable upon conversion with respect to the Debentures, which default continues for 5 days;
 - (v) a default by the Corporation in performing or observing any of the other covenants, agreements or obligations of the Corporation, as described herein, and the continuance of such default for 60 days after written notice to the Corporation by the Trustee or by the Holders of not less than 25% in principal amount of Outstanding Debentures requiring the same to be remedied;
 - (vi) the failure to make a Repurchase Offer in connection with a Fundamental Change;
 - (vii) a decree, judgment, or order by a court having jurisdiction in the premises shall have been entered adjudging the Corporation or any Subsidiary bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for the Corporation or any Subsidiary, under the *Bankruptcy and Insolvency Act* (Canada), *Companies’ Creditors Arrangement Act* (Canada) or any other similar bankruptcy, insolvency or analogous applicable law and such decree, judgment or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Corporation or any Subsidiary or of a substantial part of its property, or for the winding up or liquidation of its affairs, shall have remained in force for a period of 30 consecutive days; or any substantial part of the property of the Corporation or any Subsidiary shall be sequestered or attached and shall not be returned to the possession

of the Corporation or any Subsidiary or released from such attachment, as the case may be, whether by filing of a bond, or stay or otherwise, within 30 consecutive days thereafter; or

- (viii) the Corporation or any Subsidiary shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under the *Bankruptcy and Insolvency Act* (Canada), *Companies' Creditors Arrangement Act* (Canada) or any other similar bankruptcy, insolvency or analogous applicable law or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency for it or of a substantial part of its property, or shall make an assignment for the benefit of creditors, or shall be unable, or admit in writing its inability, to pay its debts generally as they become due, or corporate action shall be taken by the Corporation or any Subsidiary in furtherance of any of the aforesaid actions; and
- (ix) default in the payment of principal by the end of any applicable grace period or resulting in acceleration of any other Indebtedness of the Corporation, or any of its subsidiaries for borrowed money where the aggregate principal amount with respect to which the default or acceleration occurred exceeds \$1 million, provided that if any such default is cured, waived, rescinded or annulled, then the Event of Default by reason thereof would be deemed not to have occurred.

then, and in each and every such case which has happened and is continuing (other than an Event of Default specified in clause (vii) or (viii) above), the Trustee may, in its discretion, and shall, upon the written request of the Holders of not less than 25% in principal amount of the Outstanding Debentures at such time (or, if there is a Global Debenture Outstanding, a written request of the Participants having received instructions from the Beneficial Holders holding at least 25% of the Outstanding Debentures), declare the principal of (and premium, if any) together with accrued interest on all such Debentures to be due and payable immediately, by a Notice in writing to the Corporation (and to the Trustee if given by the Holders), and upon any such declaration such principal amount and premium, if any, together with accrued interest thereon, shall become immediately due and payable. If the Trustee fails to notify in writing the Corporation pursuant to the terms hereof, the Debentureholders having provided the written request to the Trustee may do so. If an Event of Default specified in clause (vii) or (viii) occurs and is continuing, then the principal of (and premium, if any) together with accrued interest on all Outstanding Debentures shall become due and payable without any declaration or other act on the part of either the Trustee or any Holder.

9.2 Notice of Event of Default

The Trustee shall give to the Holders within five days after the Trustee becomes aware by way of written Notice of the occurrence of an Event of Default, Notice of every Event of Default so occurring and continuing at the time the Notice is given. When a Notice of the occurrence of an Event of Default is given by the Trustee pursuant to this section 9.2 and the Event of Default is thereafter cured, the Trustee shall give Notice that the Event of Default is no longer outstanding to all Holders to whom Notice of the occurrence of the Event of Default was given within 5 days after the Trustee becomes aware, by written Notice given by the Corporation to the Trustee, that the Event of Default has been cured and is no longer outstanding.

9.3 Waiver of Acceleration

At any time after a declaration of acceleration with respect to the Debentures has been made pursuant to Article 9 and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided, the Holders of not less than 50% in principal amount of Outstanding Debentures, by written Notice to the Corporation and the Trustee, may thereupon rescind and annul such declaration and its consequence,

- (a) if the Corporation has paid or deposited with the Trustee a sum sufficient to pay:
 - (i) all overdue interest on all Debentures;
 - (ii) the principal of (and premium, if any) any of the Debentures which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefore in such Debentures; and
 - (iii) to the extent that payment of such interest is lawful and applicable, interest upon overdue instalments of interest at the rate or rates prescribed therefor in such Debentures;
- (b) all Events of Default with respect to the Debentures, other than the non-payment of the principal of (and premium, if any), and interest on, such Debentures which have become due solely by such declaration of acceleration, have been cured or waived in accordance with the provisions of this Indenture; and
- (c) the rescission would not conflict with any judgement or decree of a court of competent jurisdiction.

9.4 Waiver

- (a) The Holders of not less than 50% in aggregate principal amount of the Outstanding Debentures may on behalf of the Holders of all Debentures waive any past default hereunder and its consequences, except a default:
 - (i) in the payment of the principal of (or premium, if any) or interest on any Debentures;
 - (ii) in respect of a covenant or provision hereof that under Article 16 cannot be modified or amended without an Extraordinary Resolution passed by the Holders; or
 - (iii) the uncured failure by the Corporation to deliver Common Shares when so required pursuant to this Indenture.
- (b) Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

9.5 Other Remedies

- (a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of (and premium, if any) or interest on Debentures or to enforce the performance of any term of the Debentures or this Indenture.
- (b) The Trustee may maintain a Proceeding even if it does not possess any Debentures or does not produce any of them in the Proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default.

9.6 Application of Money Collected

Any money collected by the Trustee pursuant to this Article in respect of Debentures shall (subject to any claims having priority under Applicable Law) be applied in the following order, at the dates fixed by the Trustee and, in case of the distribution of such money on account of principal of (and premium, if any) or interest, upon presentation of Debentures and the notation thereon of the payment (if only partially paid) and upon surrender thereof (if fully paid):

- (a) first, to the payment of all amounts due to the Trustee under this Indenture with respect to such Debentures;
- (b) second, to the payment of accrued interest on such Debentures;
- (c) third, to the payment of the principal of (and premium, if any) on such Debentures;

- (d) fourth, to the payment of any other amounts with respect to such Debentures; and
- (e) fifth, to whomever may be lawfully entitled to receive the balance of such money.

9.7 Control by Holders

- (a) The Holders of at least a majority in principal amount of the Outstanding Debentures may:
 - (i) direct the time, method and place in the Province of Ontario of conducting any Proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it with respect to the Debentures; and
 - (ii) take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of Debentures under any provisions of this Indenture or under Applicable Law.
- (b) The Trustee may refuse, however, to follow any direction that conflicts with law or this Indenture.

9.8 Limitation on Suits

No Holder of any Debenture will have any right to pursue any remedy (including any action, suit or proceeding authorized or permitted by this Indenture or pursuant to Applicable Law, but except actions for payment of overdue principal, premium, if any, or interest or for the conversion of the Debentures pursuant to Article 4) with respect to this Indenture or the Debentures unless: (i) the Holder gives to the Trustee notice of a continuing Event of Default; (ii) the Holders of at least 25% in principal amount of the then Outstanding Debentures make a request in writing to the Trustee to pursue the remedy; (iii) such Holder or Holders offer or provide to the Trustee security and indemnity in form satisfactory to the Trustee against any loss, liability or expense; (iv) the Trustee does not comply with the request within 30 days after receipt of such request and indemnity; and (v) during such 30-day period the Holders of a majority in principal amount of Outstanding Debentures do not give the Trustee a direction inconsistent with the request.

Holders may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

9.9 Collection Suit by Trustee

If an Event of Default specified in Section 9.1(a)(i) or 9.1(a)(ii) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee against the Corporation for the whole amount of principal (and premium, if any) and interest remaining unpaid.

9.10 Trustee May File Proofs of Claim

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders lodged or allowed in any judicial proceedings relative to the Corporation, its creditors or its property.

9.11 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defences made by the party litigant. This section 9.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to section 9.8, or a suit by any Holder or group of Holders of more than 50% in principal amount of the Outstanding Debentures.

9.12 Delay or Omission Not Waiver

No delay or omission of the Trustee or of any Holder of any Debenture to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

9.13 Remedies Cumulative

No remedy herein conferred upon or reserved to the Trustee or upon or to the Holders is intended to be exclusive of any other remedy, but each 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 statute.

9.14 Judgment Against the Corporation

The Corporation covenants and agrees with the Trustee that, in case of any Proceeding to obtain judgment for payment of the principal of, premium, if any, or interest, if any, on the Debentures, judgment may be rendered against it in favour of the Holders or in favour of the Trustee, as holder of a power of attorney for the Holders, for the amount which may remain due in respect of the Debentures and the interest and premium, if any, thereon.

9.15 Rights of Holders to Receive Payment and to Convert

Notwithstanding any other provision of this Indenture, the right of any Holder of a Debenture to receive payment of the principal amount, Fundamental Change

Repurchase Price, and interest, if any, in respect of the Debentures held by such Holder, on or after the respective due dates expressed in the Debentures and this Indenture (whether upon repurchase or otherwise), and to convert such Debenture in accordance with Article 4, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Article 4, is, subject to compliance with the provisions of Section 9.8, absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

ARTICLE 10

SATISFACTION AND DISCHARGE

10.1 Non-Presentation of Debentures

If any Debentureholder fails to present any Debentures for payment on the date on which the principal of, premium, if any, or interest thereon, becomes payable, whether on a Payment Date, Maturity Date or any other repayment date, or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require:

- (a) the Corporation shall thereafter be entitled to pay or deliver to the Trustee and direct the Trustee to set aside;
- (b) in respect of moneys or Common Shares in the hands of the Trustee which may or should be applied to the payment of the Debentures, the Corporation shall thereafter be entitled to direct the Trustee to set aside; or
- (c) if the redemption was made pursuant to any Notice given by the Trustee, the Trustee may itself thereafter set aside,

the principal of, premium, if any, and interest on such Holder's Debentures, in trust to be paid to such Debentureholder upon due presentation or surrender of such Debentures in accordance with the provisions of this Indenture; and thereupon the principal of, premium, if any, and interest payable on each Debenture in respect whereof such moneys and, if permitted hereunder, Common Shares have been set aside shall be deemed to have been paid and the Holder thereof shall thereafter have no right in respect thereof except to receive delivery and payment of the moneys or Common Shares, if applicable, so set aside by the Trustee upon due presentation and surrender thereof, subject to the provisions of section 2.4. For greater certainty, the provisions of Article 6 shall not prevent the application of moneys received by the Trustee pursuant to this section 10.1 to the payment of principal, premium, if any, and interest on such Holder's Debentures.

10.2 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 release the Corporation from its covenants herein contained (other than the provisions relating to the

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

ARTICLE 11 THE TRUSTEE

11.1 Duties of Trustee

In the exercise of its rights, duties and obligations prescribed or conferred by this Indenture, the Trustee shall act honestly and in good faith and shall exercise that degree of care, diligence and skill that a reasonably prudent corporate trustee would exercise in comparable circumstances. Subject to the foregoing, the Trustee shall be liable only for an act or failure to act arising from or in connection with wilful misconduct, bad faith or gross negligence on the part of the Trustee. The Trustee shall not be liable for any act or default on the part of any agent employed by it or for permitting any agent or co-trustee to receive and retain any moneys payable to the Trustee under this Indenture, except as aforesaid.

11.2 Employ Agents

The Trustee may, but is not required to, employ (at the expense of the Corporation) such Counsel, agents, experts and other assistants as it may reasonably require for the proper determination and discharge of its duties under this Indenture, and shall not be responsible for any negligence or misconduct on the part of any such Counsel, agent, experts or other assistant or for any liability incurred by any Person as a result of not employing such Counsel, agent, experts or other assistant, and may pay reasonable remuneration for all services performed for it with respect to this Indenture, and shall be entitled to receive reimbursement for all reasonable disbursements, costs, liabilities and expenses made or incurred by it with respect to this Indenture. All such disbursements, costs, liabilities and expenses in relation to this Indenture and all expenses incidental to the preparation, execution, creation and issuance of the Debentures, whether done or incurred at the request of the Trustee or the Corporation, shall bear interest at the posted annual rate of interest charged by the Trustee from time to time to its corporate trust customers from the date which is 30 days following receipt by the Corporation of an invoice from the Trustee with respect to such expenses until the date of reimbursement and shall (together with such interest) be paid by the Corporation immediately upon receipt of such invoice.

11.3 Reliance on Evidence of Compliance

In the exercise of its rights, duties and obligations under this Indenture, the Trustee may, if it is acting in good faith, act and rely, as to the truth of the

statements and the accuracy of the opinions expressed therein, upon statutory declarations, Opinions of Counsel, reports, directions, orders, certificates and Certificates of the Corporation required by the Trustee to be furnished to it in the exercise of its rights, duties and obligations under this Indenture, if the Trustee examines such statutory declarations, Opinions of Counsel, reports, directions, orders, certificates or Certificates of the Corporation and determines that they indicate compliance with the applicable requirements of this Indenture.

11.4 Provision of Evidence of Compliance to Trustee

In addition to any other provisions of this Indenture, the Trustee may, at any time any action is taken which relates to any of paragraphs (a) through (c) below, and acting in good faith, require evidence of compliance with the conditions precedent provided for in this Indenture relating to:

- (a) the certification pursuant to section 2.7 and delivery of Debentures;
- (b) the satisfaction and discharge of this Indenture; or
- (c) the taking of any other action or step to be taken by the Trustee at the request, or on the application, of the Corporation.

11.5 Contents of Evidence of Compliance

Evidence of compliance required by section 11.4 shall consist of:

- (a) a Certificate of the Corporation that the conditions precedent referred to in such Certificate have been complied with in accordance with the terms of this Indenture;
- (b) in the case of conditions precedent compliance with which are, pursuant to this Indenture, made subject to review or examination by Counsel, an Opinion of Counsel to the Corporation that such conditions precedent have been complied with in accordance with the terms of this Indenture; and
- (c) in the case of conditions precedent compliance with which are subject to the review or examination by auditors or appraisers, an opinion or report of a chartered accountant or appraiser, as the case may be, approved by the Trustee acting reasonably, that such conditions precedent have been complied with in accordance with the terms of this Indenture.

11.6 Advice of Experts

The Trustee may act or not act and rely or not rely, and shall be protected in acting or not acting and relying or not relying in good faith, on the opinion, advice or information (including the Opinion of Counsel) obtained from any counsel, auditor, valuer, engineer, surveyor or other expert, whether obtained by the Trustee or by the Corporation, and, if acting in good faith, may rely as to the truth of the statements and the accuracy of the opinions expressed in any report or opinion furnished by such Person and may obtain such assistance as may be

necessary to the proper determination and discharge of its duties and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid, including the disbursements of any legal or other advisor or assistants.

11.7 Trustee May Deal in Debentures

In its personal capacity or any other capacity, the Trustee, and each Affiliate of the Trustee, may buy, sell, lend upon, become a pledgee of and deal in the Debentures and generally contract and enter into financial transactions with the Corporation and any Affiliate of the Corporation without being liable to account for any profits made thereby.

11.8 Conditions Precedent to Trustee's Obligation to Act

- (a) The Trustee shall not be bound to give any notice, or to do, observe or perform or see to the observance or performance by the Corporation of any of the obligations imposed under the Indenture or to supervise or interfere with any of the activities of the Corporation, or to do or take any act, action or Proceeding by virtue of the powers conferred on it by this Indenture, unless and until it shall have been required to do so under the terms of this Indenture; nor shall the Trustee be required to take notice of any default or Event of Default, other than in payment of any moneys required by this Indenture to be paid to the Trustee, unless and until notified in writing of such default or Event of Default by the Corporation or by any Holder, which notice shall distinctly specify such default or Event of Default, and in the absence of any such notice the Trustee may conclusively assume that no default or Event of Default has occurred. Any such notice or requisition shall in no way limit any discretion given to the Trustee in this Indenture to determine whether or not to take action with respect to any default or Event of Default or with respect to any such requisition.
- (b) The obligation of the Trustee to do any of the actions referred to in subsection (a), including to commence or to continue any Proceeding or any right of the Trustee or the Holders, shall be conditional upon the Holders furnishing, when required by notice in writing by the Trustee, sufficient funds to commence or continue such action and an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities which may result from such action and any loss and damage the Trustee may suffer by reason of such action.

11.9 Trustee Not Required to Give Security

The Trustee shall not be required to grant any Lien or give security for its conduct or administration under this Indenture.

11.10 Resignation or Removal of Trustee; Conflict of Interest

- (a) The Trustee represents and warrants to the Corporation that at the time of the execution and delivery of this Indenture no material conflict of interest exists with respect to the Trustee's role as a fiduciary hereunder.
- (b) The Trustee may resign as trustee hereunder by giving not less than 60 days notice in writing to the Corporation or such shorter notice as the Corporation may accept as sufficient. The Trustee shall resign if a material conflict of interest arises with respect to its role as trustee under this Indenture that is not eliminated within 90 days after the Trustee becomes aware of such conflict of interest. Immediately after the Trustee becomes aware that it has a material conflict of interest it shall provide the Corporation with written notice of the nature of that conflict. Upon any such resignation, the Trustee shall be discharged from all further duties and liabilities under this Indenture. None of the validity and enforceability of this Indenture or the Debentures shall be affected in any manner whatsoever by reason only of the existence of a material conflict of interest on the part of the Trustee (whether arising prior to or after the date of this Indenture). If the Trustee does not comply with this section, any Holder or the Corporation may apply to the Ontario Superior Court of Justice sitting in Toronto for an order that the Trustee be replaced as trustee under this Indenture.
- (c) In the event of the Trustee resigning or being removed by the Holders by Extraordinary Resolution or by the Corporation or being dissolved, becoming insolvent or bankrupt, going into liquidation or otherwise becoming incapable of acting as trustee under this Indenture, the Corporation shall immediately appoint a successor Trustee unless a successor Trustee has already been appointed by the Holders; failing such appointment by the Corporation, the retiring Trustee or any other Holder may apply to a judge of the Ontario Superior Court of Justice sitting in Toronto, on such notice as such judge may direct, for the appointment of a successor Trustee. The successor Trustee so appointed by the Corporation or by such court shall be subject to removal by the Holders by way of an Act of Holders. Any successor Trustee appointed under any provision of this section shall be a corporation authorized to carry on the business of a trust company in Canada. On any appointment of the successor Trustee, the successor Trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named in this Indenture as Trustee. The expenses of all acts, documents and Proceedings required under this section will be paid by the Corporation in the same manner as if the amount thereof were fees payable to the Trustee under this Indenture.
- (d) Any successor Trustee shall, immediately upon appointment, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trusts under this Indenture, with like effect as if originally named as Trustee hereunder. Nevertheless, upon the written request of the successor Trustee or of the Corporation and upon payment

of all outstanding fees and expenses, the Trustee ceasing to act shall execute and deliver a document assigning and transferring to such successor Trustee, upon the trusts expressed in this Indenture, all the rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property (including money) held by such Trustee to the successor Trustee in its place. Should any deed, conveyance or other document in writing from the Corporation be required by any successor 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 other documents in writing shall, on the request of the successor Trustee, be made, executed, acknowledged and delivered by the Corporation.

- (e) Any corporation into which the Trustee is amalgamated or with which it is consolidated or to which all or substantially all of its corporate trust business is sold or is otherwise transferred or any corporation resulting from any consolidation or amalgamation to which the Trustee is a party shall be a successor Trustee under this Indenture, without the execution of any document or any further act; provided that such successor Trustee is a corporation qualified to carry on the business of a trust company in Canada or the Province of Ontario and shall not have a material conflict of interest in its role as a fiduciary under this Indenture.

11.11 Authority to Carry on Business; Resignation

The Trustee represents and warrants 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 Canada. If the Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Indenture and the Debentures issued hereunder shall not be affected in any manner 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 Canada, either become so authorized or resign in the manner and with the effect specified in section 11.10.

11.12 Protection of Trustee

By way of supplement to any Applicable Law from time to time relating to trustees and in addition to any other provision of this Indenture for the relief of the Trustee, it is expressly agreed that:

- (a) the Trustee shall not be liable for or by reason of any statements of fact or recitals in this Indenture or in the Debentures (except the representations, warranties and covenants contained in the last sentence of subsection 2.7(d) and in subsection 2.10(a) and sections 11.1 and 11.13 which are being given by the Trustee in its personal capacity) or 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 to any Person notice of the execution of this Indenture unless and until an Event of Default and a declaration of acceleration has occurred, and the Trustee has determined or become obliged to enforce the same;
- (c) the Trustee shall not incur any liability or be in any way responsible for the consequence of any breach on the part of the Corporation of any of the covenants contained in this Indenture or of any acts of the agents or servants of the Corporation;
- (d) the Corporation indemnifies and saves harmless the Trustee and its officers, directors and employees and agents from and against any and all liabilities, losses, costs, claims, actions, expenses (including legal fees and disbursements on a solicitor and client basis) or demands 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 under this Indenture, including those arising out of or related to actions taken or omitted to be taken by the Trustee contemplated by this Indenture, and including legal fees and disbursements on a solicitor and client basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Trustee, save only in the event of the gross negligence in acting or failing to act, or the wilful misconduct or bad faith of the Trustee. It is understood and agreed that this indemnification shall survive the termination or discharge of this Indenture or the resignation or removal of the Trustee;
- (e) without limiting the generality of subsection 11.12(d), the Corporation will indemnify and hold harmless the Trustee and upon written request reimburse the Trustee for the amount of (i) any taxes levied or imposed and paid by the Trustee as a result of payments made under or with respect to the Debentures, (ii) any liability (including penalties and interest) arising therefrom or with respect thereto paid by the Trustee as a result of payments made under or with respect to the Debentures, and (iii) any taxes levied or imposed and paid by the Trustee with respect to reimbursement under (d) above but excluding any taxes on the Trustee's net income arising from fees for acting as the trustee hereunder or in respect of the Trustee's capital.
- (f) the Trustee shall not be liable by reason of the statements or implications of fact or law contained in or arising out of anything contained in this Indenture or in the Debentures or be required to verify the same, but all statements or implications shall be deemed to have been made by the Corporation only;

- (g) the Trustee may, in the exercise of all or any of the trusts, powers and discretion vested in it under this Indenture, act by the responsible officers of the Trustee; the Trustee may delegate to any Person the performance of any of the trusts and powers vested in it by this Indenture, and any delegation may be made upon such terms and conditions and subject to such regulations as the Trustee may think to be in the best interest of the Holders;
- (h) the Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any matter under this Indenture, unless the Trustee shall have received from the Corporation or a Holder written notice stating the matter in respect of which the Trustee should have notice or actual knowledge;
- (i) the Trustee shall not be bound to act in accordance with any direction or request of the Corporation until an executed copy of the document containing the direction or request has been delivered to the Trustee, and the Trustee shall be fully empowered to act and shall be fully protected from all liability in acting upon any document purporting to be a Debenture and believed by the Trustee to be genuine; and
- (j) the Trustee shall not be responsible for any error made or act done by it resulting from reliance upon the signature of any Person on behalf of the Corporation or of any Person on whose signature the Trustee may be called upon to act or refrain from acting under this Indenture.

11.13 Additional Representations and Warranties of Trustee

The Trustee represents and warrants to the Corporation that:

- (a) the Trustee is a trust company validly existing under the laws of its jurisdiction of incorporation;
- (b) the Trustee has full power, authority and right to execute and deliver and perform its obligations under this Indenture, and has taken all necessary action to authorize the execution, delivery and performance by it of this Indenture; and
- (c) this Indenture has been duly executed and delivered by the Trustee.

11.14 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 agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

11.15 Trustee Not Bound to Act

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, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, 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, regulation or guideline, then it shall have the right to resign on 10 days' written notice to the Corporation provided: (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

11.16 Compliance with Privacy Laws

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, the **"Privacy Laws"**) applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Corporation shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Indenture and not to use it for any other purpose except with the consent of or direction from the Corporation or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

ARTICLE 12 MEETINGS OF DEBENTUREHOLDERS

12.1 Purposes for Which Meetings May be Called

A meeting of Debentureholders may be called at any time and from time to time pursuant to this Article to make, give or take any Act provided by this Indenture to be made, given or taken by Debentureholders.

12.2 Call, Notice and Place of Meetings

- (a) The Trustee may at any time and from time to time and shall, on receipt of a Corporation Request or a requisition in writing made by the Holders of at least 5% in principal amount of the Outstanding Debentures and upon being indemnified and funded to its reasonable satisfaction by the Corporation or upon being funded and indemnified to its reasonable satisfaction by the Holders making such requisition, as the case may be, against the costs which may be incurred in connection with the calling and holding of such meeting, call a meeting of Debentureholders for any purpose specified in section 12.1, to be held at such time and at such place in the City of Toronto, Province of Ontario, as the Trustee shall determine. Notice of every meeting of Debentureholders, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in section 15.2, not less than 21 or more than 60 days prior to the date fixed for the meeting.
- (b) If at any time the Corporation, pursuant to a Board Resolution, or the Holders of at least 5% in principal amount of the Outstanding Debentures shall have requested the Trustee to call a meeting of the Debentureholders for any purpose specified in section 12.1, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication, or mailing, as the case may be, of the notice of such meeting within 30 days after receipt of such request, funding and indemnity or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Corporation or the Debentureholders in the amount above specified, as the case may be, may determine the time and the place in the City of Toronto, Province of Ontario, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a).

12.3 Proxies

A Debentureholder may be present and vote at any meeting of Debentureholders, and may sign written resolutions and other instruments in writing in lieu of a meeting as contemplated in section 12.8, by an authorized representative. The Corporation with the approval of the Trustee may, from time to time, make and vary regulations as it shall think fit providing for and governing any or all the following matters for the purpose of enabling the Debentureholders to vote at any such meeting by proxy:

- (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

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, or sent by other electronic communication 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.

12.4 Persons Entitled to Vote at Meetings

To be entitled to vote at any meeting of Debentureholders, a Person shall be: (a) a Holder of one or more Outstanding Debentures; or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Debentures by such Holder or Holders. The only persons who shall be entitled to be present or to speak at any meeting of Debentureholders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its Counsel and any representatives of the Corporation and its Counsel.

12.5 Quorum; Action

- (a) Persons entitled to vote 25% in principal amount of Outstanding Debentures shall constitute a quorum for a meeting of Debentureholders. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Debentureholders, be dissolved. In the absence of a quorum in any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, the Debentureholders present or represented at such adjourned meeting shall constitute the quorum and the business for which the meeting was adjourned may be transacted. Notice of the reconvening of any adjourned meeting shall be given as provided in subsection 12.2(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.
- (b) Except as limited by subsection 16.2, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of Holders of a majority in principal amount of the Debentures present or represented by proxy at such meeting or adjourned meeting; provided, however, that, except as limited by subsection 16.2, any resolution with respect to any Act that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of Outstanding Debentures may be adopted at a meeting or an adjourned meeting duly reconvened and at

which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of Outstanding Debentures.

- (c) Any resolution passed or decision taken at any meeting of Debentureholders duly held in accordance with this section 12.5 will be binding on all Debentureholders, whether or not present or represented at the meeting.

12.6 Determination of Voting Rights; Chairman; Conduct and Adjournment of Meetings

- (a) Notwithstanding any other provisions of this Indenture, the Trustee or the Corporation, with the approval of the Trustee, may make and from time to time may vary such reasonable regulations as it may deem advisable for any meeting of Debentureholders in regard to proof of the holding of Debentures and the appointment of proxies and in regard to the appointment and duties of scrutineers of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted by any such regulations, the holding of Debentures shall be proved in the manner specified in section 1.12 and the appointment of any proxy shall be proved in the manner specified in section 1.12. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in section 1.12 or other proof.
- (b) The Trustee shall, by an instrument in writing, appoint a chairman and secretary of the meeting, unless the meeting shall have been called by the Corporation or by Debentureholders as provided in subsection 12.2(b), in which case the Corporation or the Debentureholders calling the meeting, as the case may be, shall in like manner appoint a chairman and secretary.
- (c) At any meeting of Debentureholders, each Holder of a Debenture then Outstanding or proxy in relation to a Debenture then Outstanding shall be entitled to one vote for each one thousand Dollars (\$1,000) principal amount of Debentures held or represented by such proxy; provided, however, that no vote shall be cast or counted at any meeting in respect of any Debenture challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Debenture or proxy.
- (d) Any meeting of Debentureholders duly called pursuant to subsection 12.2(b) at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of Outstanding Debentures represented at the meeting and the meeting may be held as so adjourned without further notice.

12.7 Counting Votes and Recording Action of Meetings

The vote upon any resolution submitted to any meeting of Debentureholders shall be by written ballots on which shall be inscribed the signatures of the Debentureholders or of their representatives by proxy and the principal amounts and serial numbers of Outstanding Debentures held or represented by them. The chairman of the meeting shall appoint two scrutineers of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Debentureholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the scrutineers of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in section 12.2 and, if applicable, section 12.5. Each copy shall be signed and verified by the affidavits of the chairman and secretary of the meeting and one such copy shall be delivered to the Corporation, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

12.8 Instruments in Writing

All actions which may be taken and all powers which may be exercised by the Holders at a meeting held as hereinbefore in this Article 12 may also be taken and exercised (i) by the Holders of a majority in principal amount of Outstanding Debentures by an instrument in writing signed in one or more counterparts by such Holders or their duly appointed proxies or agents with respect to resolutions which are not Extraordinary Resolutions and (ii) by the Holders of not less than 100% in principal amount of Outstanding Debentures by an instrument in writing signed in one or more counterparts by such Holders or their duly appointed proxies or agents with respect to resolutions which are Extraordinary Resolutions and the expression "Extraordinary Resolution" when used in this Indenture shall include an instrument so signed.

12.9 Holdings by the Corporation Disregarded

In determining whether Holders holding Debentures evidencing the required number of Debentures are present at a meeting of Holders for the purpose of determining a quorum or for the purpose of determining whether Holders have concurred in any consent, waiver, resolution or other action under this Indenture, the Debentures owned legally or beneficially by the Corporation shall be disregarded.

ARTICLE 13
AMALGAMATION, CONSOLIDATION, CONVEYANCE, TRANSFER OR LEASE

13.1 Amalgamation and Consolidations of Corporation and Conveyances Permitted Subject to Certain Conditions

The Corporation will not consolidate with or amalgamate into any other corporation or enter into any reorganization or arrangement or effect any conveyance, sale, transfer or lease of all or substantially all of its assets, unless:

- (a) the Corporation shall be the continuing corporation, or the successor corporation (or the Person that leases or that acquires by conveyance, sale or transfer all or substantially all of the Corporation's assets) (such corporation or Person being referred to as the "**Successor Corporation**") shall be organized and existing under the laws of Canada or of any province thereof and shall expressly assume the due and punctual payment of the principal of, the premium, if any, and interest on all Outstanding Debentures, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be performed by the Corporation by supplemental indenture satisfactory to the Trustee, executed and delivered to the Trustee by such corporation;
- (b) the Debentures will be valid and binding obligations of the Successor Corporation entitling the Holders thereof, as against the Successor Corporation, to all the rights of Debentureholders under this Indenture; and
- (c) the Corporation or such Successor Corporation, as the case may be, shall not immediately thereafter be in default under this Indenture or the Debentures and no event that, after notice or passage time, would become an event of default, shall have occurred and be continuing; and
- (d) if the Corporation will not be the resulting or Successor Corporation, the Corporation shall have, at or prior to the effective date of such consolidation, merger or transfer, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer complies with this section 13.1 and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for and relating to such transaction have been complied with.

Upon the assumption of the Corporation's obligations by such entity in such circumstances, except for a lease of the Corporation's properties substantially as an entirety and, subject to certain other exceptions, the Corporation shall be discharged from all obligations under the Debentures and the Indenture. Although such transactions are permitted under the Indenture, certain of the foregoing transactions occurring could constitute a Fundamental Change of the

Corporation, permitting each Holder to require the Corporation to purchase the Debentures of such holder as described above.

13.2 Rights and Duties of Successor Corporation

- (a) In case of any such amalgamation, reorganization, arrangement, conveyance, sale, transfer or lease and upon any such assumption by the Successor Corporation, such Successor Corporation shall agree to be bound by the terms of this Indenture as principal obligor in place of the Corporation, with the same effect as if it had been named herein as the Corporation. Such Successor Corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Corporation, any or all Debentures which theretofore shall not have been signed by the Corporation and delivered to the Trustee. All Debentures so issued shall in all respects have the same legal rank and benefit under this Indenture as Debentures theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Debentures have been issued at the date of the execution hereof.
- (b) In the case of any such amalgamation, reorganization, arrangement, conveyance, sale, transfer or lease, such changes in phraseology and form (but not in substance) may be made in Debentures thereafter to be issued as may be appropriate.

ARTICLE 14 GUARANTEE

14.1 Guarantors

- (a) The Guarantor agrees to execute a guarantee in substantially the form attached hereto as Schedule 14.1 concurrently herewith.
- (b) In the event that the Corporation creates or acquires any new Subsidiary subsequent to the date of this Indenture, the Corporation shall cause such Subsidiary to execute a Guarantee in substantially the form attached hereto as Schedule 14.1 concurrently with the creation or acquisition of such new Subsidiary.

14.2 Release of a Guarantor

The Trustee shall release a Guarantor from its guarantee if at any time the Corporation delivers to the Trustee an Officer's Certificate and other documentary evidence satisfactory to the Trustee indicating that such Guarantor is no longer a Subsidiary of the Corporation in accordance with the terms hereof.

14.3 Waiver Regarding Material Information

The Guarantor hereby waives any right it may have to disclosure by the Trustee or any of the Holders of material information in respect of the Corporation and/or

any dealings between the Corporation and the Trustee with respect to the Debentures.

ARTICLE 15

NOTICES

15.1 Notice to Corporation

Any Notice to the Corporation shall be in writing and shall be valid and effective if delivered, sent by facsimile transmission (with receipt confirmed), or mailed to the Corporation, at:

NOVADAQ TECHNOLOGIES INC.
2585 Skymark Avenue, Suite 306
Mississauga, Ontario
L9W 4L5

Attention: Chief Financial Officer
Facsimile No.: (905) 629-0282

and such Notice shall be deemed to have been received by the Corporation, where given by delivery, on the day of delivery, where sent by facsimile transmission (with receipt confirmed), on the day of transmittal of such Notice if sent before 5:00 p.m. on a Business Day and on the next succeeding Business Day if not sent before 5:00 p.m. on a Business Day, and, where mailed, on the fifth Business Day following the mailing date, but only if sent by first class mail from a destination within Canada, or only airmail, postage prepaid, if sent from a destination outside Canada. The Corporation may from time to time notify the Trustee of a change in address or facsimile number by Notice given as provided in section 15.3.

15.2 Notice to Holders

- (a) Any Notice to Debentureholders may be effectively given if delivered, sent by facsimile transmission (with receipt confirmed), or mailed, in each case at post office address(es) appearing in the relevant register and such Notice shall be deemed to have been received by a Holder, where given by delivery, on the day of delivery, where sent by facsimile transmission (with receipt confirmed) on the day of transmittal of such Notice if sent before 5:00 p.m. on a Business Day, and, where mailed, on the fifth Business Day following the mailing date, but only if sent by first class mail to a destination within Canada, or only by airmail, postage prepaid, if sent to a destination outside Canada.
- (b) If the regular mail service is suspended or for any other reason it shall be impracticable to give Notice to Debentureholders by mail, then such notification to Debentureholders may be given by the publication of the Notice once in a daily newspaper with national circulation in Canada or in any other manner approved by the Trustee, and it shall constitute sufficient Notice to such Holders for every purpose hereunder. In any case where

Notice to Debentureholders is given by mail, neither the failure to mail such Notice nor any defect in any Notice so mailed to any particular Holder shall affect the sufficiency of such Notice with respect to other Debentureholders.

- (c) Any Notice sent to the Debentureholders as provided above shall be effective notwithstanding that any such Notice has accidentally or inadvertently not been delivered or mailed to one or more such Holders.

15.3 Notice to Trustee

Any Notice to the Trustee shall be in writing and shall be valid and effective if delivered, sent by facsimile transmission (with receipt confirmed), or mailed to the Trustee, at:

COMPUTERSHARE TRUST COMPANY OF CANADA
100 University Avenue
Toronto, Ontario
M5J 2Y1

Attention: Manager, Corporate Trust Department
Facsimile No.: (416) 981-9777

and such Notice shall be deemed to have been received by the Trustee, where given by delivery, on the day of delivery, where sent by facsimile transmission (with receipt confirmed), on the day of transmittal of such Notice if sent before 5:00 p.m. on a Business Day and on the next succeeding Business Day if not sent before 5:00 p.m. on a Business Day, and, where mailed, on the fifth Business Day following the mailing date, but only if sent by first class mail from a destination within Canada, or only by airmail, postage prepaid, if sent from a destination outside Canada. The Trustee may from time to time notify the Corporation of a change in address or facsimile number by Notice given as provided in section 15.1.

ARTICLE 16 AMENDMENTS, SUPPLEMENTS AND WAIVERS

16.1 Without Consent of Holders

The Corporation and the Trustee may amend or supplement this Indenture or the Debentures without notice to or consent of any Debentureholder for the purpose of:

- (a) evidencing a successor to the Corporation and the assumption by that successor of the Corporation's obligations under this Indenture and the Debentures;
- (b) adding to the Corporation's covenants for the benefit of the Holders or surrendering any right or power conferred upon the Corporation;

- (c) securing the Corporation's obligations in respect of the Debentures;
- (d) evidencing and providing for the acceptance of the appointment of a successor trustee in accordance with Article 11;
- (e) complying with the requirements of the *Canada Business Corporations Act* applicable to trust indentures;
- (f) curing any ambiguity, omission, inconsistency or correcting or supplementing any defective provision contained in this Indenture; or
- (g) making any other changes to the Indenture that do not adversely affect the interest of the Holders in any material respect.

16.2

With Consent of Holders

- (a) The Corporation and the Trustee may amend or supplement this Indenture or the Debentures with the written consent of the Holders of at least a majority in aggregate principal amount of the Debentures then Outstanding. However, without approval thereof by Extraordinary Resolution, an amendment, supplement or waiver may not:
 - (i) alter the manner of calculation or rate of accrual of interest on the Debentures or change the time of payment;
 - (ii) make the Debentures payable in money or securities other than that stated in the Debenture;
 - (iii) change the Stated Maturity of the Debenture;
 - (iv) reduce the principal amount or Fundamental Change Repurchase Price with respect to the Debenture;
 - (v) make any change that adversely affects the rights of Holders to require the Corporation to purchase the Debentures at the option of Holders;
 - (vi) impair the right to institute suit for the enforcement of any payment with respect to the Debenture or with respect to conversion of the Debenture;
 - (vii) change the currency of payment of principal of, or interest on, the Debenture;
 - (viii) except as otherwise permitted or contemplated by provisions of the Indenture concerning specified reclassification or corporate reorganizations, adversely affect the conversion rights of the Debenture; or

- (ix) change the provisions in the Indenture that relate to modifying or amending the Indenture.
- (b) Without limiting the provisions of subsection 16.2(a), the Holders of a majority in aggregate principal amount of the Outstanding Debentures may, on behalf of all the Holders of all Debentures:
 - (i) waive compliance by the Corporation with restrictive provisions of the Indenture, as detailed in the Indenture; and
 - (ii) waive any past default under the Indenture and its consequences, except a default in the payment of any amount due, or in the obligation to deliver Common Shares or cash, with respect to any Debenture or in respect of any provision which under the Indenture cannot be modified or amended without the consent of the Holder of each Outstanding Debenture affected.
- (c) After an amendment, supplement or waiver under this section 16.2 becomes effective, the Corporation shall promptly mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Corporation to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

16.3 Execution of Supplemental Indentures

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article 16 (a “**Supplemental Indenture**”) or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and subject to section 11.1, shall be fully protected in acting and relying upon, an Opinion of Counsel stating that the execution of such Supplemental Indenture is authorized or permitted by this Indenture, is not inconsistent herewith, is a valid and binding obligation of the Corporation, enforceable in accordance with its terms, subject to enforceability being limited by bankruptcy, insolvency or other laws affecting the enforcement of creditor’s rights generally and equitable remedies including the remedies of specific performance and injunction being granted only in the discretion of a court of competent jurisdiction and, in connection with a Supplemental Indenture executed pursuant to this section 16.3, that the Trustee is authorized to execute and deliver such Supplemental Indenture without the consent of the Holders and, in connection with a Supplemental Indenture executed pursuant to subsection 16.2, that the requisite consents of the Holders have been validly obtained in accordance with subsection 16.2 hereof. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture that adversely affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise.

16.4 Effect of Supplemental Indentures

Upon the execution of any Supplemental Indenture under this Article 16, this Indenture shall be modified in accordance therewith, and such Supplemental Indenture shall form a part of this Indenture for all purposes, unless otherwise so specified; and every Holder theretofore or thereafter certified and delivered under this Indenture shall be bound by the Supplemental Indenture.

16.5 Reference in Debentures to Supplemental Indentures

Debentures certified and delivered after the execution of any Supplemental Indenture pursuant to this Article 16 may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Indenture. If the Corporation shall so determine, new Debentures so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such Supplemental Indenture may be prepared and executed by the Corporation and certified and delivered by the Trustee in exchange for Outstanding Debentures.

16.6 Prior Approval of Recognized Stock Exchange

Notwithstanding anything to the contrary in this Indenture, no supplement or amendment to the terms of the Debentures or to this Indenture may be made without the prior consent of a Recognized Stock Exchange.

16.7 Officer's Certificate and Opinion of Counsel

- (a) Upon any request or application by the Corporation to the Trustee to take any action under this Indenture, the Corporation shall furnish to the Trustee at the request of the Trustee:
 - (i) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants, compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with; and
 - (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.
- (b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:
 - (i) a statement that the person making such certificate or opinion has read such covenant or condition;

- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (iii) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (iv) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with;

provided, however, that with respect to matters of fact an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.1 Acceptance of Trusts

The Corporation and the Trustee hereby specifically acknowledge and agree that the Trustee is acting hereunder in its capacity as the Person holding the power of attorney of the Holders for the purposes of this Indenture and in conformity with and subject to the terms and conditions of this Indenture. Each Holder, by its acceptance thereof, accepts and confirms the appointment of the Trustee as the Person holding the power of attorney of such Holder for the purposes of this Indenture and in conformity with and subject to the terms and conditions of this Indenture.

17.2 Protection of Trustee

The Trustee shall not be obligated under any circumstances whatsoever in the fulfilment of any of the circumstances and obligations hereunder, to expend or risk its own funds or otherwise incur financial liability.

17.3 Counterparts and Formal Date

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of which shall together constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear a date as of the date hereof.

[The remainder of this page was left intentionally blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

NOVADAQ TECHNOLOGIES INC., as
Issuer

By: (signed) “Arun Menawat”

Name: Arun Menawat

Title: President and Chief Executive
Officer

NOVADAQ CORP., as Guarantor

By: (signed) “Rick Mangat”

Name: Rick Mangat

Title: President

**COMPUTERSHARE TRUST COMPANY
OF CANADA**

By: (signed) “Daniel Marz”

Name: Daniel Marz

Title: Professional, Corporate Trust

By: (signed) “Ann Samuel”

Name : Ann Samuel

Title : Administrator, Corporate Trust

SCHEDULE 2.2

FORM OF DEBENTURE

[NOVADAQ TECHNOLOGIES INC.]

No. **SAMPLE** ONLY

NOVADAQ TECHNOLOGIES INC.

(A corporation incorporated pursuant to the laws of Canada)

5% Convertible Senior Unsecured Debenture Due February 18, 2014

Date of Initial Issue: February 18, 2009

Maturity Date: February 18, 2014

Registered Holder: <*>

**UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE
HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY
BEFORE JUNE 18, 2009.**

[For the purposes of a Global Debenture only:

**“UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED
REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY
SERVICES INC. (“CDS”) TO NOVADAQ TECHNOLOGIES INC. (THE
“ISSUER”) OR ITS AGENT FOR REGISTRATION OF TRANSFER,
EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN
RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO.,
OR IN SUCH OTHER NAME AS IS REQUESTED BY AN
AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS
MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS
REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS),
ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE
OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE
THE REGISTERED HOLDER HEREOF, CDS & CO., HAS AN
INTEREST HEREIN. THIS CERTIFICATE IS ISSUED PURSUANT TO
A MASTER LETTER OF REPRESENTATIONS OF THE ISSUER TO
CDS, AS SUCH LETTER MAY BE REPLACED OR AMENDED FROM
TIME TO TIME.”]**

Novadaq Technologies Inc. (the “**Corporation**”), for value received, hereby acknowledges itself indebted and promises to pay to the order of the registered holder on February 18, 2014 (the “**Maturity Date**”), or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Indenture hereinafter mentioned, the principal sum of

[insert amount]

in lawful money of the United States of America, on presentation and surrender of this Debenture at the principal office of the Trustee (defined below) in the manner specified in the Indenture (defined below), in the City of Toronto, Province of Ontario, and to pay interest on the

principal amount hereof at the rate of 5% per annum from the Issue Date or from the most recent Interest Payment Date to which interest has been paid or made available for payment on the Debentures then outstanding, whichever is later, in equal semi-annual instalments in arrears on the last day of June and December in each year (each such date an **“Interest Payment Date”**), commencing on **[June 30, 2009]** with overdue interest, if any, at the same rate after as well as before maturity and after as well as before default in payment of principal or interest. The Corporation may elect to pay accrued interest either (i) in cash or (ii) by increasing the principal amount of this Debenture or issuing new Debentures as set forth below (**“PIK Interest”**).

The Corporation shall elect the form of interest payment with respect to each Interest Period by delivering a notice to the Trustee at least 10 Business Days prior to the applicable Interest Payment Date. The Trustee shall promptly deliver a corresponding notice to the Holder of this Debenture. In the absence of such an election, the Corporation will be deemed to have elected to pay the accrued interest in cash.

If the Corporation elects to pay interest in cash, as interest on this Debenture becomes due, the Corporation (subject to early repurchase or conversion pursuant to the terms of the Indenture (as defined below)) shall forward or cause to be forwarded by courier or ordinary post to the registered address of the registered Holder of the Debenture for the time being, or in the case of joint Holders to the registered address of one of such joint Holders, or in accordance with the procedures established by CDS if this is a Book-Entry Only Debenture, a cheque or electronic funds transfer for such interest, payable to the order of such Holder or Holders. The forwarding of such cheque or electronic funds transfer shall satisfy and discharge the liability for interest on this Debenture to the extent of the sum represented thereby, unless such cheque, if any, be not paid on presentation.

If the Corporation elects to pay PIK Interest, the Corporation shall either (i) increase the principal amount of this Debenture in an aggregate principal amount equal to the PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar) by notice to the Trustee as prescribed in the Indenture, which increase shall be noted by the Trustee in the register of Debentureholders maintained by the Trustee or (ii) issue new Debentures (**“PIK Debentures”**) in an aggregate principal amount equal to the amount of the PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar) to the Holder of this Debenture on the Interest Record Date.

This Debenture will accrue interest on any increased principal amount thereof from and after the applicable Interest Payment Date on which a payment of PIK Interest is made. Interest shall accrue on PIK Debentures issued from and including the date of issuance of such PIK Debentures. Any such PIK Debentures shall be issued on the same terms as the Debentures and shall constitute part of the same series of securities as the Debentures and will vote together as one series on all matters with respect to the Debentures. All references to Debentures herein shall include any PIK Debentures.

The Corporation shall make payments of PIK Interest in respect of a Global Debenture by increasing the principal amount of such Global Debenture in accordance with the terms of the Indenture.

This Debenture is one of the 5% Convertible Senior Unsecured Debentures due February 18, 2014 (the **“Debentures”**) in the aggregate initial principal amount of up to \$5,150,000 plus any

amount in respect of PIK Interest in lawful money of Canada created and issued under a Trust Indenture (the “**Indenture**”) dated as of February 18, 2009 made between the Corporation and Computershare Trust Company of Canada, as trustee (the “**Trustee**”). Reference is hereby made to the Indenture for a description of the rights of the Holders of the Debentures, the Corporation and the Trustee and of the terms and conditions upon which the Debentures are issued and held, all to the same effect as if the provisions of the Indenture were herein set forth, to all of which provisions the Holder of this Debenture, by acceptance hereof, agrees. **To the extent that the terms and conditions stated in this Debenture conflict with the terms and conditions of the Indenture, the latter shall prevail.** All capitalized terms used herein have the meaning ascribed thereto in the Indenture unless otherwise indicated.

The Debentures (other than PIK Debentures) are issuable as fully registered Debentures in denominations of \$1,000 and integral multiples of \$1,000 and PIK Debentures are issuable as fully registered Debentures in denominations equal to the applicable PIK Interest. The Debentures of any authorized denomination may be exchanged, as provided in the Indenture, for Debentures in equal aggregate principal amount.

This Debenture and all other Debentures certified and issued under the Indenture, including for greater certainty, PIK Debentures, rank *pari passu* with one another, in accordance to their tenor without discrimination, preference or priority. The Debentures shall be equal in right of payment with any of the Corporation’s senior unsecured Indebtedness and senior in right of payment to all of the Corporation’s existing and future subordinated Indebtedness. The Indenture contains restrictions on the Corporation’s ability to pay dividends, incur Indebtedness, incur Liens, make Acquisitions or make dispositions.

Subject to repurchase or redemption of the Debentures in accordance with the Indenture, the aggregate principal amount of this Debenture (which shall include, for greater certainty, any increase in the aggregate principal amount of such Debentures from the payment of PIK Interest) is convertible at any time and from time to time prior to the close of business on the Business Day immediately preceding the Maturity Date into that number of Common Shares obtained by dividing the aggregate principal amount of this Debenture by the conversion price of \$1.87 per Common Share (the “**Conversion Price**”), subject to adjustment upon the occurrence of certain events specified in the Indenture. No fractional Common Shares will be delivered to the Debentureholders upon conversion, but in lieu thereof, if such a fraction shall become owing, the Corporation will make an equivalent cash payment. The accrued and unpaid interest on any Debentures so converted shall be paid in cash.

Upon the giving of notice by the Trustee of the occurrence of an Event of Default in accordance with the Indenture, the Debentures will become immediately due and payable, subject to the provisions for waiver of acceleration contained in the Indenture.

The Corporation will be required, not less than 20 days prior to the occurrence of a Fundamental Change, to make an offer to repurchase the Debentures then Outstanding by notice to the Holders thereof and the Trustee. The repurchase price payable to the Holders shall be equal to 110% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, up to but excluding the Fundamental Change Repurchase Date and such repurchase shall occur on the Fundamental Change Repurchase Date.

Following a Change of Control, the Corporation shall have the right at its option to redeem all, but not less than all, of the Debentures, on not more than 30 days' and not less than 10 days' prior notice to the Holders at a redemption price equal to 110% of the principal amount of the Debentures to be redeemed, plus accrued and unpaid interest thereon, if any, up to but excluding the Redemption Date.

Any payments made by or on behalf of the Corporation or by or on behalf of any Guarantor under or with respect to the Debentures will be made free and clear of and without withholding or deduction for or on account of any Taxes, unless the Corporation or any other payor is required to withhold or deduct Taxes by Applicable Law or by the interpretation or administration thereof by the relevant Governmental Authority. If the Corporation, or any Guarantor or any other payor of any amount under or in respect to the Debentures (including any amount paid in respect of proceeds of disposition of the Debentures to a Debentureholder) is so required to withhold or deduct any amount for or on account of Taxes from any payment made under or with respect to the Debentures, in respect of any payment by the Corporation or any Guarantor the Trustee will make such withholding or deduction and will remit the full amount withheld or deducted to the relevant Governmental Authority as and when required by Applicable Law.

The Indenture contains provisions for the holding of meetings of Debentureholders and rendering certain resolutions passed at such meetings by, or by instruments in writing signed by, the Holders of the majority in aggregate principal amount of the Debentures Outstanding binding upon all Debentureholders, subject to the provisions of the Indenture.

This Debenture may only be transferred upon compliance with the conditions precedent in the Indenture (including the restriction on transfers by Holders that are not employees of the Corporation) on the register kept at the principal office of the Trustee and at such other place or places, if any, and/or by such other registrar or registrars, if any, as the Corporation with the approval of the Trustee may designate, and may be exchanged at any such place, by the Holder hereof or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee and/or registrar may prescribe, and such transfer shall be duly noted thereon by the Trustee or other registrar.

Neither the Debentures nor the Common Shares issuable upon conversion or Maturity of the Debentures, (collectively, the **"Subject Securities"**) have been or will be registered under the U.S. Securities Act of 1933, or any state securities laws of the United States. Subject to certain exceptions, none of the Subject Securities nor any rights thereto or interest therein may be offered for purchase or sale, sold, transferred or otherwise disposed of, directly or indirectly, in the United States, its territories or possessions, or to or for the account or benefit of any "U.S. person" as that term is defined in Regulation S under the U.S. Securities Act of 1933.

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

This Debenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable thereto.

This Debenture will be entitled to the benefits of the Guarantee made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Guarantor, the Trustee and the Holders.

The Holder of this Debenture, by receiving and holding same, hereby accepts and agrees to be bound by the terms, and to be entitled to the benefits of this Debenture and of the Indenture and confirms the appointment of the Trustee and of the Indenture, the whole in accordance with and subject to the respective provisions thereof.

IN WITNESS WHEREOF NOVADAQ TECHNOLOGIES INC. has caused this Debenture to be signed by its President and Chief Executive Officer and by its Chief Financial Officer.

DATED as of the ● day of ●, 2009.

NOVADAQ TECHNOLOGIES INC.

By: _____

Title:

By: _____

Title:

TRUSTEE'S CERTIFICATE

This Debenture is one of the 5% Convertible Senior Unsecured Debentures due February 18, 2014 referred to in the within-mentioned Indenture.

**COMPUTERSHARE TRUST COMPANY
OF CANADA, as trustee**

Per: _____
Authorized Signing Officer

Date of Certification: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ●, whose address and social insurance number, if applicable, are set forth below, this Debenture (or \$_____ principal amount hereof*) of **NOVADAQ TECHNOLOGIES INC.** (the “**Corporation**”) standing in the name(s) of the undersigned in the register maintained by the registrar appointed by the Corporation with respect to such Debenture and does hereby irrevocably authorize and direct the Trustee to transfer such Debenture in such register, with full power of substitution in the premises.

Dated: _____

Address of Transferee: _____

(Street Address, City, Province and Postal Code)

Social Insurance Number of Transferee, if applicable: _____

*If less than the full principal amount of the within Debenture is to be transferred, indicate in the space provided above the principal amount to be transferred.

The signature(s) to this assignment must correspond with the name(s) as written upon the face of this Debenture in every particular without alteration or any change whatsoever. The signature(s) on this form must be guaranteed by one of the following methods:

Canada and the USA: A Medallion Signature Guarantee obtained from a member of an acceptable Medallion Signature Guarantee Program (STAMP, SEMP, MSP). Many commercial banks, savings banks, credit unions, and all broker dealers participate in a Medallion Signature Guarantee Program. The Guarantor must affix a stamp bearing the actual words “**Medallion Guaranteed**”.

Canada: A Signature Guarantee obtained from a major Canadian Schedule I chartered bank. The Guarantor must affix a stamp bearing the actual words “**Signature Guaranteed**”. Signature Guarantees are not accepted from Treasury Branches, Credit Unions or Caisses Populaires unless they are members of a Medallion Signature Guarantee Program.

Outside North America: For holders located outside North America, present the certificate(s) and/or document(s) that require a guarantee to a local financial institution that has a corresponding Canadian or American affiliate which is a member of an acceptable Medallion Signature Guarantee Program. The corresponding affiliate will arrange for the signature to be over-guaranteed.

The registered Holder of this Debenture is responsible for the payment of any documentary, stamp or other transfer taxes that may be payable in respect of the transfer of this Debenture.

Signature of Guarantor:

Authorized Officer

Signature of transferring registered Holder

Name of Institution

SCHEDULE 2.2(c)

NOVADAQ TECHNOLOGIES INC.

5 % CONVERTIBLE SENIOR UNSECURED DEBENTURES

DUE FEBRUARY 18, 2014

PRINCIPAL AMOUNT GRID

The following grid reflects the principal amount outstanding on the attached 5% Convertible Senior Unsecured Debentures due February 18, 2014 (the “**Debentures**”) and shall be adjusted at such time as PIK Interest is paid or the Debentures are converted or repurchased in accordance with the terms thereof.

DATE	AMOUNT REDUCED OR INCREASED	REMAINING OR INCREASED PRINCIPAL AMOUNT	AUTHORIZED SIGNATORY BY TRUSTEE
<*>		<*>	

SCHEDULE 3.9

FORM OF REDEMPTION NOTICE

NOVADAQ TECHNOLOGIES INC.

5 % CONVERTIBLE SENIOR UNSECURED DEBENTURES

DUE FEBRUARY 18, 2014

REDEMPTION NOTICE

To: Holders of 5% Convertible Senior Unsecured Debentures due February 18, 2014 (the “**Debentures**”) of **NOVADAQ TECHNOLOGIES INC.** (the “**Corporation**”)

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

A Change of Control is expected to occur on ●.

Notice is hereby given pursuant to section 3.9 of the Indenture dated as of February 18, 2014 (the “**Indenture**”) made between the Corporation and Computershare Trust Company of Canada as trustee (the “**Trustee**”), that \$<*> principal amount of Debentures outstanding will be redeemed as of <*> (the “**Redemption Date**”), upon payment of a redemption amount of \$<*> for each \$1,000 principal amount of Debentures, being equal to the aggregate of (i) \$1,100 and (ii) all accrued and unpaid interest thereon to but excluding the Redemption Date (collectively, the “**Redemption Amount**”).

The Redemption Amount will be payable upon presentation and surrender of the Debentures called for redemption at the following corporate trust office:

-
-
-

Attention: ●

The interest upon the principal amount of Debentures called for redemption shall cease to be payable from and after the Redemption Date, unless payment of the Redemption Amount shall not be made on presentation for surrender of such Debentures at the above-mentioned corporate trust office on or after the Redemption Date or prior to the setting aside of the Redemption Amount pursuant to the Indenture.

Debentureholders are reminded that they have the right to convert their Debentures pursuant to Article 4 of the Indenture prior to the close of business on the Business Day immediately preceding the Redemption Date by duly completing the Conversion Notice and delivering same at the place of business of the Trustee indicate above.

SCHEDULE 2.14

CONVERTIBLE SENIOR UNSECURED DEBENTURES DUE FEBRUARY 18, 2014

FORM OF U.S. TRANSFEREE CERTIFICATE

In connection with the transfer of \$_____ principal amount of 5% Convertible Senior Unsecured Debentures due February 18, 2014 of **NOVADAQ TECHNOLOGIES INC.** (the “**Corporation**”), the undersigned transferee hereby represents and warrants to the Corporation and Computershare Trust Company of Canada (the “**Trustee**”) that it:

- (a) understands and acknowledges that the Debentures and underlying common shares of the Corporation (the “**Common Shares**”) have not been and will not be registered or otherwise qualified under the United States Securities Act of 1933, as amended (the “**Securities Act**”) or the securities laws of any state of the United States and that the transfer of Debentures is being made in reliance upon private placement exemptions in the United States;
- (b) is an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act (“**Regulation D**”) and acknowledges that it is acquiring the Debentures and Common Shares as an investment for its own account, and not with a view to any resale, distribution or other disposition of the Debentures or Common Shares in violation of United States federal or state securities laws;
- (c) is a sophisticated investor and has experience in investing in persons similar to the Corporation and securities similar to the Debentures and Common Shares, and has such knowledge and experience in financial and business affairs as to be capable of evaluating the risks and merits of its investment and it is able to bear the economic risk of such investment for an indefinite period of time, including a complete loss of its investment;
- (d) acknowledges that it has not acquired the Debentures as a result of any general solicitation or general advertising (within the meaning of Regulation D), including, without limitation, advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or on the internet, or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising;
- (e) understands that upon the transfer thereof, and unless and until such time as the Corporation determines that same is no longer required under the applicable requirements of the Securities Act or applicable United States state securities laws and regulations, the certificates representing any of the Debentures and the Common Shares (and all certificates issued in exchange therefore or in substitution thereof) shall bear the following legend in addition to any additional legend required pursuant to applicable Canadian securities laws and agrees to comply with the restrictions on transfer set forth therein:

“THE DEBENTURES AND UNDERLYING COMMON SHARES OF THE CORPORATION HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) , OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS DEBENTURE NOR THE UNDERLYING COMMON SHARES NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES THAT THIS DEBENTURE AND THE UNDERLYING COMMON SHARES AND ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE CORPORATION, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 904 OF REGULATIONS UNDER THE U.S. SECURITIES ACT, (C) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144A UNDER THE U.S. SECURITIES ACT, (D) IN ACCORDANCE WITH, AND IN A TRANSACTION MEETING THE REQUIREMENTS OF, RULE 144 UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION, PROVIDED THAT IN THE CASE OF OFFERS, SALES OR TRANSFERS PURSUANT TO CLAUSES (B), (D) OR (E) ABOVE, A LEGAL OPINION AND/OR CERTIFICATE OR OTHER CERTIFICATION SATISFACTORY TO THE CORPORATION MUST FIRST BE PROVIDED.”

- (f) consents to the Corporation making a notation on its records or giving instructions to any transfer agent or trustee for the Debentures and Common Shares in order to implement the restrictions on transfer and exercise set out and described above;
- (g) understands and acknowledges that the Corporation is not obligated to file and has no present intention of filing with the United States Securities and Exchange Commission or with any state securities administrator any registration statement in respect of resales of the Debentures or Common Shares; and
- (h) understands and acknowledges that the Corporation (i) is under no obligation to be or to remain a "foreign issuer" within the meaning of Regulation S of the Securities Act, (ii) may not, at the time the Debentures or Common Shares are resold by the undersigned or at any other time, be a foreign issuer, and (iii) may engage in one or more transactions that could cause the Corporation not to be a foreign issuer. If the Corporation is not a foreign issuer at the time of any resale

pursuant to Regulation S under the Securities Act, the certificate delivered to the subsequent transferee may continue to bear the legend referenced above.

[signature page follows]

TRANSFeree:

Per: _____
Authorized Signing Officer

Date of Certification: _____

SCHEDULE 4.1(b)

FORM OF CONVERSION NOTICE

TO: NOVADAQ TECHNOLOGIES INC.
2585 Skymark Avenue, Suite 306
Mississauga, Ontario L9W 4L5

Attention: Chief Financial Officer

COMPUTERSHARE TRUST COMPANY OF CANADA
100 University Avenue
Toronto, Ontario
M5J 2Y1

Attention: Account Manager, Corporate Trust Department

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

Notice is hereby given pursuant to section 4.1 of the Indenture dated as of February 18, 2009 (the “**Indenture**”) made between the Corporation and Computershare Trust Company of Canada, as trustee (the “**Trustee**”) that the undersigned registered holder of 5% Convertible Senior Unsecured Debentures due February 18, 2014 bearing Certificate No. <*> irrevocably elects to convert such Debentures, together with PIK Interest applicable to such Debenture in the amount of \$_____ and the accrued and unpaid interest thereof, to Common Shares on the date of conversion specified below, in accordance with the terms of the Indenture referred to in such Debenture and tenders herewith the Debenture, and directs that the Common Shares of the Corporation issuable and deliverable upon such conversion be issued and delivered to the Person indicated below. (If Common Shares are to be issued in the name of a Person other than the Holder, all requisite transfer taxes must be tendered by the undersigned.)

Dated: _____

(Signature of Registered Holder)

Date of conversion: _____ (which date shall not be earlier than the date of delivery or receipt by the Corporation and the Trustee of this Conversion Notice and shall not be later than the close of business on the Business Day immediately preceding the Maturity Date).

* If less than the full principal amount of the Debenture, indicate in the space provided below the principal amount to be converted.

Principal amount to be converted \$ _____

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

Name _____

(Address, City, Province and Postal Code)

Name of guarantor: _____

Authorized signature: _____

Note: If Common Shares are to be issued in the name of a Person other than the Holder, the signature must be guaranteed by an authorized officer of a Canadian chartered bank or of a major Canadian trust company or by a medallion signature guarantee from a member of a recognized medallion signature guarantee program.

SCHEDULE 5.2

FORM OF MATURITY NOTICE

NOVADAQ TECHNOLOGIES INC.

5% CONVERTIBLE SENIOR UNSECURED DEBENTURES

DUE FEBRUARY 18, 2014

MATURITY NOTICE

To: Holders of 5% Convertible Senior Unsecured Debentures due February 18, 2014 (the **“Debentures”**) of Novadaq Technologies Inc. (the **“Corporation”**)

Note: All capitalized terms used herein have the meaning ascribed thereto in the Indenture mentioned below, unless otherwise indicated.

Notice is hereby given pursuant to section 5.2 of the Indenture dated as of February 18, 2009 (the **“Indenture”**) made between the Corporation and Computershare Trust Company of Canada, as trustee (the **“Trustee”**), that the Debentures will become due and payable as of <*> (the **“Maturity Date”**) and that the principal amount of Debentures remains convertible, at the option of the holder thereof, into Common Shares at the Conversion Price then in effect.

Pursuant to section 5.2 of the Indenture, the Corporation hereby advises the Debentureholders that it will deliver to Debentureholders who have not elected to convert their Debentures into Common Shares prior to the Maturity Date that number of Freely Tradeable Common Shares equal to the number obtained by dividing the principal amount of such Debentures by 95% of the Current Market Price of the Common Shares on the Maturity Date. The Current Market Price as at the Maturity Date shall be the Weighted Average Trading Price of the Common Shares on the TSX for the 20 consecutive Trading Days ending five Trading Days prior to such date. In the event that the Corporation elects to issue and deliver Common Shares as aforesaid, upon presentation and surrender of the Debentures, the Corporation shall pay or cause to be paid in cash to the Holder all accrued and unpaid interest to the Maturity Date, together with the cash equivalent representing fractional Common Shares, and shall, on the Maturity Date, send to the Trustee certificates representing the Common Shares to which the Holder is entitled. Unless otherwise directed by the Corporation, any shares of the Corporation issuable upon Maturity of the Debentures sold in the United States, its territories or possessions, will bear the appropriate legend set forth in section 2.19 of the Indenture.

DATED: _____

NOVADAQ TECHNOLOGIES INC.

(Authorized

Officer)

SCHEDULE 14.1

FORM OF GUARANTEE

TO: **COMPUTERSHARE TRUST COMPANY OF CANADA** as trustee under a Trust Indenture dated as of February 18, 2009 (the “Trustee”) providing for the issuance of Debentures (as defined therein) of Novadaq Technologies Inc.

THIS GUARANTEE is made this ____ day of February, 2009

WHEREAS the undersigned (hereinafter referred to as the “**Guarantor**”) has agreed to provide the Trustee with a guarantee of the Obligations (as hereinafter defined) of Novadaq Technologies Inc. (the “**Obligor**”) pursuant to a trust indenture made as of the date hereof between, *inter alia*, the Obligor and the Trustee as the same may be supplemented, amended, restated or replaced from time to time (the “**Trust Indenture**”);

AND WHEREAS the Guarantor has agreed that if this guarantee is not enforceable, the Guarantor will indemnify the Trustee;

NOW THEREFORE THIS GUARANTEE WITNESSES that in consideration of the premises and the covenants and agreements herein contained, the sum of \$1.00 now paid by the Trustee to the Guarantor and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Guarantor covenants with the Trustee as follows:

ARTICLE 1 GUARANTEE

1.1 Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees in favour of the Trustee for and on behalf of each of the holders of Debentures (“**Debentureholders**” or “**Holders**”) the due and punctual payment of the principal of and premium (if any) and interest on the Debentures and all other amounts due or owing to the Holders, and the due and punctual performance of all other obligations of the Corporation to the Holders or the Trustee, in each case in accordance with the terms of the Trust Indenture and the Debentures (collectively the “**Obligations**”) as and when the same shall from time to time become due and payable in accordance with the terms of the Trust Indenture and Debentures. The Guarantor also agrees to pay all costs and expenses incurred by the Trustee in enforcing its rights hereunder, including, without limitation, the reasonable fees and disbursements of third-party counsel to the Trustee. The Guarantor acknowledges that it will receive direct and indirect benefits from the arrangements contemplated by the Trust Indenture and the transactions contemplated thereby.

1.2 Indemnity

In addition to the guarantee provided in Section 1.1 hereof, if any or all of the Obligations are not duly paid or performed by the Obligor and are not recoverable under Section 1.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save

harmless the Trustee and each Holder from and against all losses resulting from the failure of the Obligor to pay or perform such Obligations.

1.3 Guarantor Liable as Principal

The Guarantor shall be liable to the Trustee and the Holders as principal debtor and not as surety only, and will not plead or assert to the contrary in any action taken by the Trustee or the Holders in enforcing this Agreement.

1.4 Obligations Absolute

The liability of the Guarantor hereunder will be absolute and unconditional and will not be discharged, diminished or in any way affected by:

- (a) any lack of validity or enforceability of the Obligations or any agreement between the Obligor and the Trustee and each Holder or of the guarantee of any other guarantor of the Obligations;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of the Obligor or any other guarantor or person or the amalgamation of or any change in the status, function, control or ownership of, the Obligor, the Guarantor, the Trustee or any other person;
- (d) the release or amendment of any other guarantee of the Obligations;
- (e) any lack or limitation of power, incapacity or disability on the part of the Obligor or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of the Obligor in its obligations to the Trustee and each Holder; or
- (f) any other law, regulation or other circumstance that might otherwise constitute a defence available to, or a discharge of, the Guarantor, the Obligor or any other Person in respect of any or all of the Obligations or the liability of the Guarantor.

ARTICLE 2 DEALINGS WITH OBLIGOR AND OTHERS

2.1 No Release

The liability of the Guarantor hereunder will not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Trustee or any Holder in connection with any duties or liabilities of the Obligor to the Trustee or any Holder or any guarantee therefor including any loss of or in respect of any security received by the Trustee from the Obligor or others. Without limiting the generality of the foregoing, and without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability

hereunder, without obtaining the consent of or giving notice to the Guarantor, the Trustee may, subject to the terms of the Trust Indenture:

- (a) agree to any change in the time, manner or place of payment under, or in any other term of, any agreement between the Obligor and the Trustee or any Holder; or
- (b) grant time, renewals, extensions, indulgences, releases and discharges to the Obligor or any other guarantor;
- (c) take or abstain from taking or enforcing securities or collateral from the Obligor or from perfecting securities or collateral of the Obligor or any other Person;
- (d) accept compromises from the Obligor or any other guarantor;
- (e) apply all money at any time received from the Obligor or from securities or collateral received from the Obligor or any other guarantor in accordance with the Trust Indenture; and
- (f) otherwise deal with the Obligor or any other guarantor and all other Persons and securities as the Trustee may see fit.

2.2 Release of Guarantor

Notwithstanding the foregoing, the Trustee shall release the Guarantor from its obligations pursuant to this guarantee if at any time the Corporation delivers to the Trustee an Officer's Certificate and other documentary evidence satisfactory to the Trustee indicating that such Guarantor is no longer a Subsidiary of the Corporation.

In no case will the liability of the Guarantor hereunder be discharged, diminished or in any way affected as a result of any default under, or breach by the Trustee or its agents of, (a) the Trust Indenture or any other agreement, (b) any applicable law, or (c) any other obligation or duty binding the Trustee or its agents.

The Guarantor waives all rights it may have as surety, whether at law, in equity or otherwise, that are inconsistent with the provisions of this Agreement.

2.3 No Exhaustion of Remedies

The Trustee will not be bound or obligated to exhaust its recourse against the Obligor or other persons or any securities or collateral it may hold or take any other action before being entitled to demand payment from the Guarantor hereunder.

2.4 Prima Facie Evidence

Any account settled or stated in writing by or between the Trustee and the Obligor will, in the absence of manifest error, be *prima facie* evidence that the balance or amount thereof appearing due to the Trustee is so due.

2.5 No Set-off

In any claim by the Trustee against the Guarantor, the Guarantor may not assert any set-off or counterclaim that either the Guarantor or the Obligor may have against the Trustee.

2.6 Continuing Guarantee

The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Trustee and the Holders in respect of the Obligations and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Trustee and/or the Holders. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Trustee upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of the Obligor or otherwise, all as though such payment had not been made.

2.7 Reinstatement

The guarantee and indemnity herein shall be reinstated if at any time any payment of any Obligations is rescinded or must otherwise be returned by the Trustee or any Holder upon any Proceedings of or affecting the Obligor or any other Person or for any other reason whatsoever, all as though such payment had not been made. The Trustee may concede or compromise any claim that such payment ought to be rescinded or otherwise returned, without discharging, diminishing or in any way affecting the liability of the Guarantor hereunder or the effect of this Section 2.7.

ARTICLE 3 DEMAND

3.1 Demand

If any Obligation is not paid for any reason whatsoever, including upon demand by the Trustee, the Trustee may demand forthwith from the Guarantor the total amount of such Obligation. The Guarantor will make payment to or performance in favour of the Trustee of the total amount of all Obligations hereunder forthwith after demand therefor is made to the Guarantor. The Guarantor will make payment to the Trustee forthwith upon demand of all reasonable costs and expenses incurred by the Trustee in enforcing this Guarantee.

3.2 Interest

All amounts payable by the Guarantor under this Agreement shall bear interest payable by the Guarantor from the date of demand for payment both before and after default and judgment the rate applicable to the Debentures.

ARTICLE 4 SUBROGATION AND POSTPONEMENT

4.1 Subrogation

The Guarantor will not be entitled to subrogation until the Obligations are performed and paid in full, and no such payment is subject to rescission or other like return. Thereafter, the Trustee will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations and any security held therefor resulting from such performance or payment by the Guarantor.

4.2 Postponement

Upon the occurrence of an Event of Default, all liabilities and indebtedness, present and future, absolute or contingent, of the Corporation to the Guarantor shall be postponed to the payment and performance in full of the Obligations and all other amounts payable hereunder and all monies received by the Guarantor in respect thereof shall be received in trust for the Trustee and forthwith upon receipt shall be paid over to the Trustee, the whole without in any way lessening or limiting the liability of the Guarantor under this Guarantee. Such postponement is independent of the guarantee and indemnity herein and shall remain in full force and effect until payment and performance in full of all Obligations.

ARTICLE 5 EQUAL BENEFIT

5.1 Equal Benefit

This Guarantee is entered into with the Trustee for the benefit of, and the Trustee declares that it holds the same for the equal and rateable benefit of, all Debentureholders. No Debentureholder shall have any right to institute any suit, action or proceeding against the Guarantor hereunder other than in the circumstances described in Article 9 of the Trust Indenture. Subject to the preceding sentence, all powers and trusts hereunder shall be exercised and all the proceedings at law or in equity shall be instituted, held and maintained by the Trustee for the equal benefit of all Debentureholders.

ARTICLE 6 LIMITATION OF GUARANTEE

6.1 Limitation of Guarantee

The obligations of each Guarantor (as defined in the Trust Indenture), pursuant to the Guarantee given by each Guarantor are limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution

obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Guarantor under the Guarantee (i) not constituting a fraudulent conveyance or fraudulent transfer, or (ii) not being such that there would be reasonable grounds to believe such Guarantor would not be able to meet the applicable financial tests, under applicable federal, state, provincial or territorial law.

ARTICLE 7 GENERAL

7.1 Binding Effect of the Guarantee

This Guarantee will be binding upon the successors of the Guarantor and will ensure to the benefit of the Trustee and Debentureholders and their respective successors and assigns.

7.2 Entire Agreement

This Guarantee together with the applicable provisions of the Trust Indenture constitutes the entire agreement between the Guarantor and the Trustee with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth herein or in the Trust Indenture. The Trustee will not be bound by any representations or promises made by the Obligor to the Guarantor and possession of this Guarantee by the Trustee will be conclusive evidence against the Guarantor that the Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with.

7.3 Amendments and Waivers

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantor and the Trustee. No waiver of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

7.4 Severability

If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof, and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

7.5 Waiver of Notice

The Guarantor expressly waives any right to receive notice of the existence or creation of all or any of the Obligations and presentment, demand, notice of dishonour, protest, notice of any of the events or circumstances described herein and all other notices whatsoever in respect of the Obligations except to the extent, if at all, that the *Personal Property Security Act* (Ontario) or

other applicable law requires notice to be given to the Guarantor in connection with any disposition of collateral by or on behalf of the Trustee.

7.6 Notices

Any notice to be given in connection with this Agreement shall be provided in writing to the party for whom it is intended as follows:

- (a) To the Guarantor:

c/o NOVADAQ TECHNOLOGIES INC.
2585 Skymark Avenue, Suite 306
Mississauga, Ontario
L9W 4L5

Attention: Chief Financial Officer
Facsimile No.: (905) 629-0282

- (b) To the Trustee:

COMPUTERSHARE TRUST COMPANY OF CANADA
100 University Avenue
Toronto, Ontario
M5J 2Y1

Attention: Account Manager, Corporate Trust Department
Facsimile No.: 416 981 9777

or such other mailing or facsimile address as may be designated by notice given by any party to the other. Unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt by the other party of an original of such notice or facsimile thereof if sent by facsimile transmission.

7.7 Governing Law

This Guarantee will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereto irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the Province of Ontario in respect of any action or proceeding relating in any way to this Guarantee.

7.8 Headings

The division of this Guarantee into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Guarantee. The terms "hereof", "hereunder" and similar expressions refer to this Guarantee and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Guarantee.

7.9 Extended Meanings

In this Guarantee, words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

7.10 Definitions

Terms capitalized herein but not otherwise defined shall have the meaning ascribed thereto in the Trust Indenture.

IN WITNESS WHEREOF the Guarantor has signed this Guarantee.

GUARANTOR

By: _____

Name: _____

Title: _____
