UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **December 15, 2016**

AMICUS THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-33497**	**71-0869350**
(State or other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)
1 Cedar Brook Drive, Cranbury, NJ		**08512**
(Address of Principal Executive Offices)		(Zip Code)

Registrant's telephone number, including area code: **(609) 662-2000**

(Former name or former address if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Indenture and Notes

On December 21, 2016, Amicus Therapeutics, Inc. (the "Company") issued $250 million aggregate principal amount of 3.00% Convertible Senior Notes due 2023 (the "Notes"), which amount includes the exercise in full of the $25 million over-allotment option granted to the initial purchasers of the Notes, in a private offering (the "Note Offering") to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The Notes bear interest at a fixed rate of 3.00% per year, payable semiannually on June 15 and December 15 of each year, beginning on June 15, 2017. The Notes will mature on December 15, 2023, unless earlier repurchased, redeemed, or converted in accordance with their terms. The Notes are convertible at the option of the holders, under certain circumstances and during certain periods, into cash, shares of the Company's common stock, par value $0.01 per share ("Common Stock"), or a combination thereof and may be settled as described below.

The net proceeds from the Note Offering were approximately $243.0 million, after deducting fees and estimated expenses payable by the Company. The Company used a portion of the net proceeds from the Note Offering to pay the cost of the Capped Call Transactions described below, and approximately $88.2 million of the net proceeds from the Note Offering to refinance existing unsecured debt described below. The Company intends to use the remainder of the net proceeds for general corporate purposes.

The Company issued the Notes pursuant to an indenture dated as of December 21, 2016 (the "Indenture") by and between the Company and Wilmington Trust, National Association, as trustee.

Prior to the close of business on the business day immediately preceding September 15, 2023, the Notes are convertible at the option of the holders of the Notes only under certain conditions. On or after September 15, 2023, until the close of business on the second business day immediately preceding the maturity date, holders of the Notes may convert their Notes at their option at the conversion rate then in effect, irrespective of these conditions. The Company will settle conversions of the Notes by paying or delivering, as the case may be, cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at its election. The conversion rate will initially be 163.3987 shares of Common Stock per $1,000 principal amount of Notes (equivalent to an initial conversion price of approximately $6.12 per share of Common Stock). The conversion rate is subject to customary adjustments upon the occurrence of certain events. The Company may redeem for cash all or part of the Notes, at its option, on or after December 19, 2020, under certain circumstances at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (as defined in the Indenture).

If the Company undergoes a fundamental change (as defined in the Indenture), holders of the Notes may require the Company to repurchase for cash all or part of their Notes at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date (as defined in the Indenture). In addition, if certain fundamental changes occur, the Company may be required in certain circumstances to increase the conversion rate for any Notes converted in connection with such fundamental changes by a specified number of shares of its Common Stock.

The Indenture provides for customary events of default, which include (subject in certain cases to grace and cure periods), among others: nonpayment of principal or interest; breach of covenants or other agreements in the Indenture; defaults with respect to certain other indebtedness; failure to pay certain final judgments; and certain events of bankruptcy, insolvency or reorganization. Generally, if an event of default occurs and is continuing under the Indenture, either the trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding may declare the principal amount plus accrued and unpaid interest on the Notes to be immediately due and payable.

The Notes will be the Company's senior unsecured obligations and will rank equally with all of its existing and future senior unsecured indebtedness and will rank senior in right of payment to any indebtedness that is expressly subordinated to the Notes. The Notes will also be effectively subordinated to all of the Company's existing and future secured indebtedness (to the extent of the value of the assets securing such indebtedness) and structurally subordinated to all existing and future liabilities (including trade payables) of its subsidiaries, but will not be expressly subordinated to the Company's trade payables.

The description of the Indenture and the Notes above is qualified in its entirety by reference to the text of the Indenture and the Form of Note, copies of which are attached as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K.

Capped Call Transactions

In connection with the pricing of the Notes on December 15, 2016, the Company entered into privately negotiated capped call transactions (the "Base Capped Call Transactions") with Goldman, Sachs & Co., JPMorgan Chase Bank, National Association and Royal Bank of Canada (the "Option Counterparties"), and in connection with the exercise in full of the over-allotment option granted to the initial purchasers of the Notes, on December 19, 2016, the Company entered into additional capped call transactions (such additional capped call transactions, together with the Base Capped Call Transactions, the "Capped Call Transactions") with the Option Counterparties. The Company used approximately $13.5 million of the net proceeds from the Note Offering to pay the cost of the Capped Call Transactions.

The Capped Call Transactions are expected generally to reduce the potential dilution to the Common Stock upon any conversion of Notes and/or offset the cash payments the Company is required to make in excess of the principal amount upon conversion of the Notes in the event that the market price of the Common Stock is greater than the strike price of the Capped Call Transactions (which initially corresponds to the initial conversion price of the Notes and is subject to certain adjustments under the terms of the Capped Call Transactions), with such reduction and/or offset subject to a cap based on the cap price of the Capped Call Transactions. The Capped Call Transactions have an initial cap price of $7.20 per share, which represents a premium of approximately 50% over the closing price of the Company's Common Stock on The NASDAQ Global Market on December 15, 2016, and is subject to certain adjustments under the terms of the Capped Call Transactions. The Capped Call Transactions will cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, the number of shares of Common Stock that will underlie the Notes.

The Company will not be required to make any cash payments to the Option Counterparties upon the exercise of the options that are evidenced by the Capped Call Transactions, but the Company will be entitled to receive from the Option Counterparties a number of shares of Common Stock, an amount of cash or a combination thereof based on the amount by which the market price per share of Common Stock, as measured under the terms of the Capped Call Transactions, exceeds the applicable strike price of the Capped Call Transactions during the relevant valuation period under the Capped Call Transactions, with such number of shares of Common Stock and/or amount of cash subject to a cap. If the Notes, or portions thereof, are converted prior to the 65th scheduled trading day prior to the maturity date of the Notes, then the Capped Call Transactions, or the corresponding portions thereof, will be subject to early termination, and, in lieu of the payments and deliveries described above, the Company would be entitled to receive an amount based generally on the fair value of the Capped Call Transactions at such time.

The Capped Call Transactions are separate transactions entered into by the Company with the Option Counterparties, are not part of the terms of the Notes and will not affect the rights of the holders of the Notes under the Notes. A holder of the Convertible Notes will not have any rights with respect to the Capped Call Transactions.

The description of the Capped Call Transactions above is qualified in its entirety by reference to the text of the Capped Call Transactions, copies of which are attached as Exhibits 10.1 through 10.6 to this Current Report on Form 8-K.

Refinance of Existing Unsecured Debt

On December 15, 2016, the Company and Amicus Therapeutics International Holding LTD, a private limited company incorporated under the laws of England and Wales and wholly owned subsidiary of the Company ("Amicus International"), entered into Note Purchase Agreements (the "Note Purchase Agreements") with each of GCM Grosvenor Special Opportunities Fund, Ltd. ("GCM"), Redmile Capital Fund, LP, Redmile Capital Offshore Fund, Ltd., Redmile Capital Offshore Fund II, Ltd., Redmile Special Opportunities Fund, Ltd. and P. Redmile Ltd. (the "Redmile Entities," and together with GCM, the "Holders"), pursuant to which the Company agreed to purchase notes issued by Amicus International and held by the Holders (each, an "Amicus UK Note"), under that certain Note and Warrant Purchase Agreement, dated as of February 19, 2016, entered into by and among Amicus Therapeutics

UK Limited ("Amicus UK"), the Company and each of the purchasers named therein (as amended by that certain Joinder to and Amendment of Note and Warrant Purchase Agreement, dated June 30, 2016, by and among the Company, Amicus UK, Amicus International and the purchasers named therein, the "Note and Warrant Purchase Agreement"). Pursuant to the Note Purchase Agreements, the Company agreed to purchase each Amicus UK Note from the

Holders at par, plus all accrued and unpaid interest as of the date of such purchase. Such purchases were consummated on December 21, 2016. The aggregate principal amount of the Amicus UK Notes is equal to $65 million.

Additionally, on December 15, 2016, the Company sent a Notice of Repurchase to the Redmile Entities (the "Notice of Repurchase"), which was subsequently acknowledged by the Redmile Entities. Pursuant to the Notice of Repurchase, the Company agreed to prepay all outstanding principal and accrued and unpaid interest on the notes issued by the Company and held by the Redmile Entities (the "Amicus US Notes"), under the Note and Warrant Purchase Agreement. The aggregate principal amount of the Amicus US Notes is equal to $15 million. Such prepayment was made on December 21, 2016.

The description of the Note Purchase Agreements above is qualified in its entirety by reference to the text of the Note Purchase Agreements, copies of which are attached as Exhibits 10.7 through 10.12 to this Current Report on Form 8-K.

Item 1.02 Termination of a Material Definitive Agreement.

The information regarding the Note Purchase Agreements and the Notice of Repurchase set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Note Purchase Agreements and the Notice of Repurchase terminate the Note and Warrant Purchase Agreement with respect to notes issued by the Company and Amicus International and held by the Holders.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information regarding the Indenture and the Notes set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information regarding the Indenture and the Notes set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Notes were sold to the initial purchasers in reliance on the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act for resale to qualified institutional buyers as defined in, and in reliance on, Rule 144A of the Securities Act.

The maximum number of shares of Common Stock issuable upon conversion of the Notes is 52,083,325, subject to adjustment in accordance with the terms of the Indenture.

The Notes and the underlying shares of Common Stock issuable upon conversion of the Notes, if any, have not been and will not be registered under the Securities Act, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Item 8.01. Other Events.

On December 21, 2016, the Company issued a press release announcing the closing of the Note Offering. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits: The Exhibit Index annexed hereto is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AMICUS THERAPEUTICS, INC.

Date: December 21, 2016

By: /s/ ELLEN S. ROSENBERG
Name: Ellen S. Rosenberg
Title: General Counsel and Corporate Secretary

EXHIBIT INDEX

Exhibit No.	Description
4.1	Indenture, dated December 21, 2016, by and between Amicus Therapeutics, Inc. and Wilmington Trust, National Association as trustee
4.2	Form of 3.00% Convertible Senior Note due 2023 (included in Exhibit 4.1)
10.1	Base Capped Call Transaction, dated December 15, 2016, by and between Amicus Therapeutics, Inc. and Goldman, Sachs & Co.
10.2	Base Capped Call Transaction, dated December 15, 2016, by and between Amicus Therapeutics, Inc. and JPMorgan Chase Bank, National Association
10.3	Base Capped Call Transaction, dated December 15, 2016, by and between Amicus Therapeutics, Inc. and Royal Bank of Canada
10.4	Additional Capped Call Transaction, dated December 19, 2016, by and between Amicus Therapeutics, Inc. and Goldman, Sachs & Co.
10.5	Additional Capped Call Transaction, dated December 19, 2016, by and between Amicus Therapeutics, Inc. and JPMorgan Chase Bank, National Association
10.6	Additional Capped Call Transaction, dated December 19, 2016, by and between Amicus Therapeutics, Inc. and Royal Bank of Canada
10.7	Note Purchase Agreement, dated December 15, 2016, by and among Amicus Therapeutics, Inc., Amicus Therapeutics International

	Holding LTD and P Redmile Ltd.
10.8	Note Purchase Agreement, dated December 15, 2016, by and among Amicus Therapeutics, Inc., Amicus Therapeutics International Holding LTD and Redmile Capital Offshore Fund, Ltd.
10.9	Note Purchase Agreement, dated December 15, 2016, by among Amicus Therapeutics, Inc., Amicus Therapeutics International Holding LTD and Redmile Capital Offshore Fund II, Ltd.
10.10	Note Purchase Agreement, dated December 15, 2016, by and among Amicus Therapeutics, Inc., Amicus Therapeutics International Holding LTD and Redmile Special Opportunities Fund, Ltd.
10.11	Note Purchase Agreement, dated December 15, 2016, by and among Amicus Therapeutics, Inc., Amicus Therapeutics International Holding LTD and Redmile Capital Fund, LP
10.12	Note Purchase Agreement, dated December 15, 2016, by and between Amicus Therapeutics International Holding LTD and GCM Grosvenor Special Opportunities Master Fund, Ltd.
99.1	Press Release dated December 21, 2016 titled “Amicus Therapeutics Announces Closing of Offering of Senior Convertible Notes and Exercise in Full of Option to Purchase Additional Notes”

AMICUS THERAPEUTICS, INC.

(Company)

WILMINGTON TRUST, NATIONAL ASSOCIATION

(Trustee)

3.00% Convertible Senior Notes due 2023

INDENTURE

Dated as of December 21, 2016

INDENTURE, dated as December 21, 2016, between Amicus Therapeutics, Inc., a Delaware corporation, as issuer (the "**Company**"), and Wilmington Trust, National Association, a national banking association, as trustee (the "**Trustee**").

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of the Company's 3.00% Convertible Senior Notes due 2023 (the "**Notes**"), having the terms, tenor, amount and other provisions hereinafter set forth, and, to provide therefor, has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make the Notes, when duly executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the legal, valid and binding obligations of the Company, in accordance with the terms of the Notes and this Indenture, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders, as follows:

ARTICLE 1.
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein", "hereof", "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The word "or" is not exclusive and the word "including" means including without limitation. The terms defined in this Article 1 include the plural as well as the singular.

"**Act**" has the meaning specified in Section 1.03.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 5.08 and Section 6.03 hereof.

"**Additional Notes**" means any Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.01 hereof, with the same terms as the Initial Notes.

"**Additional Shares**" has the meaning specified in Section 4.06(a) hereof.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified

Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning specified in Section 2.06(b) hereof.

"**Applicable Procedures**" means, with respect to any matter at any time, the policies and procedures of a Depositary, if any, that are applicable to such matter at such time.

"**Authenticating Agent**" means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Notes.

"**Authorized Officer**" means any Person (whether designated by name or office) appointed by or pursuant to a Board Resolution for the purpose, or a particular purpose, of this Indenture; *provided* that written notice of such appointment shall have been given to the Trustee.

"**Beneficial Ownership Percentage**" means, with respect to any Holder or beneficial owner of a Note or beneficial interest therein, as of any day, the fraction, expressed as a percentage, (i) the numerator of which is the number of shares of Common Stock that the Holder or beneficial owner, as applicable, and each Person subject to aggregation of shares with such Holder or beneficial owner, as applicable, under Section 13 of the Exchange Act and the rules and regulations promulgated thereunder directly or indirectly beneficially own (as defined under Section 13 of the Exchange Act and the rules and regulations promulgated thereunder) and (ii) the denominator of which is the number of shares of Common Stock outstanding. For the avoidance of doubt, the Trustee will have no responsibility to calculate any Beneficial Ownership Percentage.

"**Bid Solicitation Agent**" means the Person appointed by the Company, from time to time, to solicit secondary market bid quotations for the Trading Price of the Notes in accordance with Section 4.01(b)(2) hereof. The Trustee will be the initial Bid Solicitation Agent. The Company may appoint another person (or itself) as the Bid Solicitation Agent without prior notice to Holders.

"**Board of Directors**" means either the board of directors of the Company or any duly authorized committee of that board.

"**Board Resolution**" when used with reference to the Company means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or to be closed.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however

designated) the equity of such Person, but excluding any debt securities convertible into such equity.

"**Cash Settlement**" has the meaning specified in Section 4.03(a) hereof.

"**Clause A Distribution**" has the meaning specified in Section 4.04(c) hereof.

"**Clause B Distribution**" has the meaning specified in Section 4.04(c) hereof.

"**Clause C Distribution**" has the meaning specified in Section 4.04(c) hereof.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Combination Settlement**" has the meaning specified in Section 4.03(a) hereof.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act.

"**Common Equity**" of any Person means the Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means, subject to Section 4.07, the shares of common stock, par value $0.01 per share, of the Company authorized at the date of this instrument as originally executed or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided, however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**common stock**" includes any stock of any class of Capital Stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof and which is not subject to redemption by the issuer thereof.

"**Company**" has the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 9, shall include its successors and assigns.

"**Company Order**" means a written request or order signed in the name of the Company by an Officer thereof.

"**Conversion Agent**" has the meaning specified in Section 5.02 hereof.

"**Conversion Date**" has the meaning specified in Section 4.02(b) hereof.

"**Conversion Notice**" has the meaning specified in Section 4.02(b) hereof.

"**Conversion Price**" means, in respect of each Note, as of any date, $1,000 *divided by* the Conversion Rate in effect on such date.

"**Conversion Rate**" means, initially, 163.3987 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment as set forth herein.

"**Corporate Trust Office**" means, with respect to the office of the Trustee, the designated corporate trust office of the Trustee, which office at the date hereof is located at Wilmington Trust, National Association, 15950 North Dallas Parkway, Dallas, Texas 75248, Attention: Amicus Therapeutics Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"**corporation**" means a corporation, association, joint stock company, limited liability company or business trust.

"**Custodian**" means the Trustee, as custodian with respect to the Notes (so long as the Notes constitute Global Notes), or any successor entity.

"**Daily Conversion Value**" means, for each of the 60 consecutive VWAP Trading Days during any Observation Period, one-sixtieth (1/60th) of the product of (i) the Conversion Rate in effect on such VWAP Trading Day and (ii) the Daily VWAP on such VWAP Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount *divided by* 60.

"**Daily Settlement Amount**" shall consist of, for each $1,000 principal amount of Notes for each of the 60 consecutive VWAP Trading Days during the Observation Period, (i) cash equal to the lesser of (A) the Daily Measurement Value and (B) the Daily Conversion Value for the relevant VWAP Trading Day; and (ii) if the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (A) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (B) the Daily VWAP for such VWAP Trading Day.

"**Daily VWAP**" means, for each of the 60 consecutive VWAP Trading Days during the applicable Observation Period (or, if applicable, the VWAP Trading Day referred to in Section 4.03(b)(i)), the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "FOLD <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such VWAP Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "Daily VWAP" will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Depositary**" means, with respect to the Notes issuable or issued in the form of a Global Note, the Depository Trust Company or the Person designated as Depositary by the Company pursuant to the applicable provisions of this Indenture until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Notes of any such series shall mean the Depositary with respect to the Notes of that series.

"**Distributed Property**" has the meaning specified in Section 4.04(c) hereof.

"**Dollar**" or "**$**" means a dollar or other equivalent unit in such coin or currency of the United States of America that is legal tender for the payment of public and private debts at the time of payment.

"**Effective Date**" means, with respect to a Fundamental Change or a Make-Whole Fundamental Change, as applicable, the date such Fundamental Change or Make-Whole Fundamental Change, as applicable, occurs or becomes effective.

"**Event of Default**" has the meaning specified in Section 6.01 hereof.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Purchase Notice**" means the "Form of Fundamental Change Purchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Free Trade Date**" means the date that is one year after the last date of original issuance of the Notes.

"**Free Transferability Certificate**" means a certificate substantially in the form attached hereto as Exhibit B.

"**Freely Tradable**" means, with respect to any Notes, that such Notes are eligible to be sold by a Person who is not an "affiliate" of the Company (within the meaning of Rule 144)

and has not been an "affiliate" of the Company (within the meaning of Rule 144) during the immediately preceding three months without any volume or manner of sale restrictions under the Securities Act.

"**Fundamental Change**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(1) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act), other than the Company or its wholly-owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such Person or group has become the direct or indirect ultimate "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50.0% of the voting power of the Company's Common Equity;

(2) the consummation of (A) any recapitalization, reclassification or change of Common Stock (other than changes resulting from a subdivision or combination) pursuant to which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (other than a transaction or event described in clause (B) below), (B) any share exchange, consolidation, merger or similar event involving the Company pursuant to which Common Stock will be converted into or exchanged for, cash, securities or other property or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's wholly owned Subsidiaries; *provided* that any such event described in clause (B) above where the holders of the Company's voting stock immediately prior to such event own, directly or indirectly, more than 50% of the voting stock of the continuing or surviving Person or transferee or the parent thereof immediately after such event and such holders' proportional voting power immediately after such transaction vis-â-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-â-vis each other immediately prior to such transaction will not constitute a Fundamental Change under such clause (B);

(3) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(4) the Common Stock or other common stock or Common Equity interests into which the Notes are then convertible) ceases to be listed on any of The New York Stock Exchange, the NYSE MKT, The NASDAQ Global Market, The NASDAQ Capital Market or The NASDAQ Global Select Market (or their respective successors);

provided, *however*, that in the case of a transaction or event described in clause (2) above, if at least 90% of the consideration received or to be received by holders of the Common Stock (excluding cash payments for fractional shares and cash payments in respect of dissenters' appraisal rights) in the transaction or transactions that would otherwise constitute a "**Fundamental Change**" consists of shares of common stock (or Common Equity interests that are traded on any of The New York Stock Exchange, the NYSE MKT, The NASDAQ Global

Market, The NASDAQ Capital Market or The NASDAQ Global Select Market (or their respective successors) or that will be so traded when issued or exchanged in connection with the transaction that would otherwise constitute a "Fundamental Change" under clause (2) above, and as a result of such transaction or transactions, the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments in respect of dissenters' appraisal rights (subject to settlement in accordance with the provisions of Sections 4.03, 4.04 and 4.06 hereof), such event shall not be a "Fundamental Change". For purposes of this paragraph, any transaction that constitutes a Fundamental Change pursuant to both clause (1) and clause (2) above (without giving effect to the proviso to clause (2)) shall be deemed a Fundamental Change solely under clause (2) above (subject to the proviso to clause (2)).

"**Fundamental Change Company Notice**" has the meaning specified in Section 3.02(a) hereof.

"**Fundamental Change Expiration Time**" has the meaning specified in Section 3.03(a) hereof.

"**Fundamental Change Purchase Date**" has the meaning specified in Section 3.01(a) hereof.

"**Fundamental Change Purchase Notice**" has the meaning specified in Section 3.03(a) hereof.

"**Fundamental Change Purchase Price**" has the meaning specified in Section 3.01(a) hereof.

"**Global Note**" means a Note evidencing all or part of a series of Notes, issued to the Depositary for such series or its nominee, and registered in the name of such Depositary or nominee.

"**Holder**" means the Person in whose name a Note is registered in the Register.

"**Indenture**" means this Indenture as amended or supplemented from time to time.

"**Initial Notes**" has the meaning specified in Section 2.01 hereof.

"**Initial Purchasers**" means the "Purchasers" listed in Schedule 1 to the Purchase Agreement.

"**Interest Payment Date**" means, with respect to the payment of interest on the Notes, each June 15 and December 15 of each year, beginning on June 15, 2017 or if any such day is not a Business Day, the immediately following Business Day.

"**Issue Date**" means, with respect to any Note, the first date of original issuance of such Note (and not, for the avoidance of doubt, the date of issuance of any Note issued in whole or in part upon registration or transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.05, 2.06, 2.07, 2.08, 2.09, 2.11 or 3.07).

"**Last Original Issuance Date**" means December 21, 2016.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on that Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, the "Last Reported Sale Price" will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the mid-point of the last bid and last ask prices for the Common Stock on the relevant Trading Day from a nationally recognized independent investment banking firm selected by the Company for this purpose, which may be one of the Initial Purchasers. Any such determination will be conclusive absent manifest error.

"**Make-Whole Fundamental Change**" means any event that (i) is a Fundamental Change (subject to any exceptions or exclusions to the definition thereof) or (ii) would be a Fundamental Change, but for the proviso in clause (2) of the definition of "Fundamental Change."

"**Market Disruption Event**" means, if the Common Stock is listed for trading on The NASDAQ Global Market or listed on another U.S. national or regional securities exchange, the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Scheduled Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means December 15, 2023.

"**Measurement Period**" has the meaning specified in Section 4.01(b)(ii) hereof.

"**Note**" or "**Notes**" has the meaning specified in the first paragraph of the Recitals of this Indenture.

"**Notice of Default**" has the meaning specified in Section 6.01(f) hereof.

"**Observation Period**" means, with respect to any Note surrendered for conversion, (i) subject to the immediately succeeding clause (ii), if the relevant Conversion Date occurs prior to the 65th Scheduled Trading Day prior to the Maturity Date, the 60 consecutive VWAP Trading Days beginning on, and including, the third VWAP Trading Day after such Conversion Date; (ii) subject to the immediately succeeding clause (iii), with respect to Conversion Notices received on or after the date the Company has delivered a Redemption Notice and prior to the corresponding Redemption Date, the 60 consecutive VWAP Trading Days beginning on, and including, the 62nd Scheduled Trading Day immediately preceding the applicable Redemption Date; and (iii) if the relevant Conversion Date occurs on or after the 65th

Scheduled Trading Day prior to the Maturity Date, the 60 consecutive VWAP Trading Days beginning on, and including, the 62nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Offer Expiration Date**" has the meaning specified in Section 4.04(e) hereof.

"**Officer**" or "**officer**" shall mean the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, a Vice President (whether or not designated by a number or word or words added before or after the title "Vice President"), the Treasurer, an Assistant Treasurer, the Corporate Secretary, an Assistant Secretary or the Controller.

"**Officer's Certificate**" means a certificate signed by an Authorized Officer and delivered to the Trustee.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion of counsel, who may be an employee of, or counsel for, the Company or an Affiliate of the Company.

"**Outstanding**" means, subject to Section 12.04, with respect to the Notes, any Notes authenticated by the Trustee except (i) Notes cancelled by it, (ii) Notes delivered to it for cancellation, (iii) Notes paid pursuant to Section 2.09 hereof and (iv)(A) Notes replaced pursuant to Section 2.09 hereof, on and after the time such Note is replaced (unless the Trustee and the Company receive proof satisfactory to them that such Note is held by a bona fide purchaser), (B) Notes converted pursuant to Article 4 hereof, on and after their Conversion Date, (C) any and all Notes, as of the Maturity Date, if the Paying Agent

holds, in accordance with this Indenture, money sufficient to pay all of the Notes then payable, and (D) any and all Notes owned by the Company or any other obligor upon the Notes.

"**Paying Agent**" means any Person authorized by the Company to pay the principal amount of, any premium on, interest on, or the Fundamental Change Purchase Price, any Notes on behalf of the Company.

"**Person**" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, other entity, or government or any agency or political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in definitive, fully registered form issued in minimum denominations of $1,000 principal amount and integral multiples of $1,000 in excess thereof.

"**Physical Settlement**" has the meaning set forth in Section 4.03(a) hereof.

"**Preliminary Offering Circular**" means the Preliminary Offering Circular dated December 14, 2016 related to the offering of the Initial Notes.

"**Purchase Agreement**" means that certain Purchase Agreement, dated December 15, 2016, among the Company and the representatives of the Initial Purchasers, on behalf of the Initial Purchasers.

"**Redemption Date**" has the meaning specified in Section 11.01(b) hereof.

"**Redemption Notice**" has the meaning specified in Section 11.03 hereof.

"**Redemption Period**" has the meaning specified in Section 11.03(a)(vi) hereof.

"**Redemption Price**" has the meaning specified in Section 11.02 hereof.

"**Reference Property**" has the meaning specified in Section 4.07(a) hereof.

"**Reference Property Unit**" has the meaning specified in Section 4.07(a) hereof.

"**Register**" and "**Registrar**" have the respective meanings specified in Section 2.06.

"**Regular Record Date**" means, with respect to any Interest Payment Date, June 1 (whether or not a Business Day) or December 1 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

"**Reporting Event of Default**" has the meaning specified in Section 6.03(a) hereof.

"**Resale Restriction Termination Date**" has the meaning specified in Section 2.08(b)(ii).

"**Responsible Officer**" when used with respect to the Trustee, means any officer within the corporate trust department or any other successor group of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject and who in each case shall have direct responsibility for the administration of this Indenture.

"**Restricted Global Note**" has the meaning specified in Section 2.08(b)(i).

"**Restricted Note**" has the meaning specified in Section 2.07(a)(i).

"**Restricted Notes Legend**" has the meaning specified in the Form of Note attached hereto as Exhibit A.

"**Restricted Stock**" has the meaning specified in Section 2.07(b)(i).

"**Restricted Stock Legend**" means a legend substantially in the form set forth in Exhibit C hereto.

"**Rule 144**" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not listed or admitted for trading, "Scheduled Trading Day" means a Business Day.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Settlement Amount**" has the meaning specified in Section 4.03(a)(ii) hereof.

"**Settlement Election**" has the meaning specified in Section 4.03(a)(i) hereof.

"**Settlement Election Notice**" has the meaning specified in Section 4.03(a)(i) hereof.

"**Settlement Method**" means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to be elected) by the Company in accordance with Section 4.03(a)(i) hereof.

"**Share Exchange Event**" has the meaning specified in Section 4.07(a) hereof.

"**Significant Subsidiary**" means, with respect to any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as in effect on the original date of issuance of the Notes.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received by the Holder upon conversion as specified in the Company's Specified Dollar Amount Election Notice (which may be part of the Settlement Election Notice).

"**Specified Dollar Amount Election**" has the meaning specified in Section 4.03(a)(i) hereof.

"**Specified Dollar Amount Election Notice**" has the meaning specified in Section 4.03(a)(i) hereof.

"**Spin-Off**" has the meaning specified in Section 4.04(c) hereof.

"**Stock Price**" has the meaning specified in Section 4.06(c) hereof.

"**Subsidiary**" of any Person means (a) any corporation, association or other business entity other than a partnership of which more than 50% of the outstanding total voting power ordinarily entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees or other voting members of the governing body thereof

is at the time owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries or (b) any partnership the sole general partner or the managing general partner of which is the Company or a Subsidiary of the Company or the only general partners of which are the Company or of one or more Subsidiaries of the Company (or any combination thereof).

"**Successor Company**" has the meaning specified in Section 9.01(a) hereof.

"**Trading Day**" means a Scheduled Trading Day on which (i) there is no Market Disruption Event, and (ii) trading in the Common Stock generally occurs on The NASDAQ Global Market or, if the Common Stock is not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, "Trading Day" means a "Business Day."

"**Trading Price**" of the Notes on any Trading Day means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for $1,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such Trading Day from three independent nationally recognized securities dealers selected by the Company, which may include one of the Initial Purchasers; *provided* that, if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for $1,000,000 principal amount of the Notes from a nationally recognized securities dealer on a Trading Day, then the Trading Price per $1,000 principal amount of Notes on such Trading Day will be deemed to be less than 98% of the product of (i) the Last Reported Sale Price of the Common Stock on such Trading Day and (ii) the Conversion Rate in effect on such Trading Day. Any such determination will be conclusive absent manifest error. If (x) the Company is not acting as Bid Solicitation Agent and the Company does not instruct the Bid Solicitation Agent to obtain bids when required, or the Bid Solicitation Agent fails to solicit bids when required, or (y) the Company is acting as Bid Solicitation Agent and it fails to make such determination, then, in either case, the Trading Price per $1,000 principal amount of the Notes will be deemed to be less than 98% of the product of (i) the Last Reported Sale Price of the Common Stock and (ii) the Conversion Rate, in each case, for each Trading Day on which the Company or the Bid Solicitation Agent fails to do so, as the case may be.

"**Trigger Event**" has the meaning specified in Section 4.04(c) hereof.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended.

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to Section 10.11 hereof, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"**U.S.**" means the United States of America.

"**Valuation Period**" has the meaning specified in Section 4.04(c) hereof.

"**VWAP Market Disruption Event**" means (i) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted to trading to open for trading during its regular trading session or (ii) the occurrence or existence, prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than a one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant securities exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock.

"**VWAP Trading Day**" means a Scheduled Trading Day on which (i) there is no VWAP Market Disruption Event and (ii) trading in the Common Stock generally occurs on The NASDAQ Global Market or, if the Common Stock is not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "VWAP Trading Day" means a "Business Day."

Section 1.02 *References to Interest*. Any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest, if, in such context, Additional Interest is, was or would be payable pursuant hereto. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 1.03 *Acts of Holders*.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be made, 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 an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as 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, or of the holding by any Person of Notes, shall be sufficient for any purpose of this Indenture and (subject to Section 10.01 hereof) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.03.

(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 acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his

individual capacity, such certificate or affidavit shall also constitute sufficient proof of his 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 other manner which the Trustee deems sufficient.

(c) The amount of Notes held by any Person executing any such instrument or writings as the Holder thereof, and the numbers of such Notes, and the date of his holding the same, may be proved by the production of such Notes or by a certificate executed, as depositary, by any trust company, bank, banker or member of a national securities exchange (wherever situated), if such certificate is in form satisfactory to the Trustee, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Notes therein described; or such facts may be proved by the certificate or affidavit of the Person executing such instrument or writing as the Holder thereof, if such certificate or affidavit is in form satisfactory to the Trustee. The Trustee and the Company may assume that such ownership of any Notes continues until (1) another certificate bearing a later date issued in respect of the same Notes is produced or (2) such Notes are produced by some other Person or (3) such Notes are no longer Outstanding.

(d) The fact and date of execution of any such instrument or writing and the amount and number of Notes held by the Person so executing such instrument or writing may also be proved in any other manner that the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.03.

(e) The principal amount and serial numbers of Notes held by any Person, and the date of holding the same, shall be proved by the Registrar.

(f) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(g) The Company may but shall not be obligated to set a record date for purposes of determining the identity of Holders of any Outstanding Notes of any series entitled to vote or consent to any action by vote or consent authorized or permitted by Section 2.11, 6.02, 6.04, 6.05, 8.02 or 10.09. Such record date shall be not less than 10 nor more than 60 days prior to the first solicitation of such consent or the date of the most recent list of Holders of such Notes furnished to the Trustee pursuant to Section 5.11 prior to such solicitation.

(h) If the Company solicits from Holders any request, demand, authorization, direction, notice, consent, election, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, election, waiver or other Act, but the

Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, election, waiver or other Act may be given before or after such record date, but only the Holders of record at the Close of Business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, election, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of the record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 2.
THE NOTES

Section 2.01 *Title and Terms; Payments*.

The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $250,000,000 aggregate principal amount (the "**Initial Notes**") except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.05, 2.06, 2.07, 2.08, 2.09, 2.11, 3.07 or 4.02. The Company may, from time to time after the execution of this Indenture, without notice to or the consent of the Holders, execute and deliver to the Trustee for authentication Additional Notes with the same CUSIP number as the Initial Notes in an unlimited aggregate principal amount, and the Trustee shall thereupon authenticate and deliver said Additional Notes to or upon receipt of a Company Order, without any further action by the Company hereunder; *provided*, *however*, that (1) if any such Additional Notes are not fungible with the Initial Notes for U.S. federal income tax purposes, any such Additional Notes will have one or more separate CUSIP numbers so long as they remain not fungible; (2) such Additional Notes must have the same terms as the Initial Notes (other than issue price and date from which interest shall accrue); and (3) the Trustee must receive an Officer's Certificate to the effect that such issuance of Additional Notes complies with the provisions of this Indenture, including each provision of this paragraph.

The Notes shall be known and designated as the "3.00% Convertible Senior Notes due 2023" of the Company. The principal amount shall be payable on the Maturity Date.

The principal amount of and premium, if any, on any Physical Notes shall be payable at the Corporate Trust Office and at any other office or agency in the continental United States maintained by the Company for such purpose. Interest on Physical Notes will be payable (i) to Holders holding Physical Notes having an aggregate principal amount of $1,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Register and (ii) to Holders holding Physical Notes having an aggregate principal amount of more than $1,000,000 of Notes, by wire transfer in immediately available funds to an account within the United States designated by such Holder in a written application delivered by such Holder to the Trustee and the Paying Agent not later than the relevant Regular Record Date for such interest payment, which application shall remain in effect until such Holder notifies the Trustee and Paying Agent to the

contrary in writing. The Company will pay or cause the Paying Agent to pay principal of and premium, if any, and interest on, Global Notes in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such Global Note, on each Interest Payment Date, Fundamental Change Purchase Date or other payment date, as the case may be.

Any Notes repurchased by the Company will be retired and no longer Outstanding hereunder.

Section 2.02 *Ranking*. The Notes constitute general unsecured obligations of the Company.

Section 2.03 *Denominations*. The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1,000 and any integral multiple of $1,000 in excess thereof.

Section 2.04 *Execution, Authentication, Delivery and Dating*. The Notes shall be executed by manual or facsimile signature on behalf of the Company by any Officer of the Company.

Notes bearing the manual or facsimile signatures of individuals who were at any time an Officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or did not hold such office at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes. The Company Order shall specify the amount of Notes to be authenticated, and shall further specify the amount of such Notes to be issued as one or more Global Notes or as one or more Physical Notes. The Trustee in accordance with such Company Order shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by an authorized signatory of the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.05 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Physical Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officer executing such Notes may determine, as evidenced by such Officer's execution of such Notes; *provided*, that any such temporary Notes shall bear legends on the face of such Notes as set forth in the Form of Note attached hereto as Exhibit A and/or Sections 2.07 and 2.11.

After the preparation of Physical Notes, the temporary Notes shall be exchangeable for Physical Notes upon surrender of the temporary Notes at any office or agency of the Company designated pursuant to Section 5.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute and the Trustee shall, upon Company Order, authenticate and deliver in exchange therefor a like principal amount of Physical Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Physical Notes.

Section 2.06 *Registration; Registration of Transfer and Exchange*.

(a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee a register in the continental United States (the register maintained in such office and in any other office or agency designated pursuant to Section 5.02 being herein sometimes collectively referred to as the "**Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Trustee is hereby appointed "Registrar" (the "**Registrar**") for the purpose of registering Notes and transfers of Notes as herein provided.

Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 5.02 for such purpose, the Company shall execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination and of a like aggregate principal amount and tenor, each such Note bearing such restrictive legends as may be required by this Indenture (including the Form of Note attached hereto as Exhibit A and Sections 2.07 and 2.11).

At the option of the Holder and subject to the other provisions of Sections 2.07 and 2.11, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount and tenor, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Notes, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such Notes.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other

governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 2.11 not involving any transfer.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Note in the circumstances set forth in Section 2.11(a)(iv).

(b) Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**") nor any other Persons on whose behalf any Agent Member may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. The Trustee shall have no liability, responsibility or obligation to any Agent Members or any other Person on whose behalf Agent Members may act with respect to (i) any ownership interests in the Global Note, (ii) the accuracy of the records of the Depositary or its nominee, (iii) any notice required hereunder, (iv) any payments under or with respect to the Global Note (v) or actions taken or not taken by any Agent Members.

(c) Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written or electronic certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Section 2.07 *Transfer Restrictions*.

(a) *Restricted Notes*.

(i) Every Note (and all securities issued in exchange therefor or substitution thereof) that bears, or that is required under this Section 2.07(a) to bear, the Restricted Notes Legend will be deemed to be a "**Restricted Note**." Each Restricted Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Notes Legend) and will bear a restricted CUSIP number for the Notes unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company (including without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein), and each Holder of a Restricted Note, by such Holder's acceptance of such Restricted Note, will be deemed to be bound by the applicable restrictions on transfer applicable to such Restricted Note.

(ii) Until the Resale Restriction Termination Date, any Note will bear the Restricted Notes Legend unless:

(A) such Note, was transferred (1) to the Company or a Subsidiary of the Company (within the meaning of Rule 144) or (2) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer; or

(B) such Note was transferred pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; or

(C) the Company delivers written notice to the Trustee and the Registrar (including, without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein) stating that the Restricted Notes Legend may be removed from such Note and all Applicable Procedures have been complied with;

(iii) In addition, until the Resale Restriction Termination Date:

(A) no transfer of any Note will be registered by the Registrar unless the transferring Holder delivers a notice substantially in the form of the Form of Assignment and Transfer, with the appropriate box checked, to the Trustee and such transfer complies with the transfer restrictions set forth in the Restricted Notes Legend; and

(B) the Registrar will not register any transfer of any Note that is a Restricted Note to a Person that is an "affiliate" of the Company or has been an "affiliate" of the Company (within the meaning of Rule 144) within the three months immediately preceding the date of such proposed transfer.

(iv) On and after the Resale Restriction Termination Date, any Note will bear the Restricted Notes Legend at any time the Company determinates that, to comply with law, such Note must bear the Restricted Notes Legend.

(b) *Restricted Stock*.

(i) Every share of Common Stock that bears, or that is required under this Section 2.07(b) to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**". Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Indenture (including the Restricted Stock Legend) and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent (including, without limitation by the Company's delivery of the Free Transferability Certificate as provided herein) of the Company, and each Holder of Restricted Stock, by such Holder's acceptance of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

(ii) Until the Resale Restriction Termination Date, any shares of Common Stock issued upon the conversion of a Restricted Note, will be issued in book-entry form and will bear the Restricted Stock Legend, unless the Company delivers written notice to the Trustee, the Registrar and the transfer agent for the Common Stock stating that such shares of Common Stock need not bear the Restricted Stock Legend.

(iii) On and after the Resale Restriction Termination Date, shares of Common Stock issued upon conversion of a Restricted Note will be issued in book-entry or certificated form (as determined by the Company) and will bear the Restricted Stock Legend at any time the Company reasonably determines that, to comply with law, such shares of Common Stock must bear the Restricted Stock Legend.

(c) As used in this Section 2.07, the term "**transfer**" means any sale, pledge, transfer, loan, hypothecation or other disposition whatsoever of any Restricted Note, any interest therein or any Restricted Stock.

Section 2.08 *Expiration of Restrictions*.

(a) *Physical Notes*. Any Physical Note (or any security issued in exchange or substitution therefor) that does not constitute a Restricted Note may be exchanged for a new Note or Notes of like tenor and aggregate principal amount that do not bear the Restricted Notes Legend. To exercise such right of exchange, the Holder of such Note must surrender such Note in accordance with the provisions of Section 2.11 and deliver any additional documentation reasonably required by the Company, the Trustee or the Registrar in connection with such exchange.

(b) *Restricted Global Notes; Resale Restriction Termination Date*.

(i) If, on the Free Trade Date, or the next succeeding Business Day if the Free Trade Date is not a Business Day, any Notes are represented by a Global Note that is a Restricted Note (any such Global Note, a "**Restricted Global Note**"), the Company may effect an exchange of every beneficial interest in each Restricted Global Note for beneficial interests in Global Notes that are not subject to the restrictions set forth in the Restricted Notes Legend and in Section 2.07(a) hereof.

(ii) To effect such automatic exchange, the Company will (A) deliver to the Depositary an instruction letter for the Depositary's mandatory exchange process and (B) deliver to each of the Trustee and the Registrar a duly completed Free Transferability Certificate promptly after the Free Trade Date. The first date on which both the Trustee and the Registrar have received the Free Transferability Certificate will be known as the "**Resale Restriction Termination Date**".

(iii) Immediately upon receipt of the Free Transferability Certificate by each of the Trustee and the Registrar:

(A) the Restricted Notes Legend will be deemed removed from each of the Global Notes specified in such Free Transferability Certificate and the restricted CUSIP number will be deemed removed from each of such Global Notes and deemed replaced with an unrestricted CUSIP number specified in the relevant Free Transferability Certificate;

(B) the Restricted Stock Legend will be deemed removed from any shares of Common Stock previously issued upon conversion of the Notes; and

(C) thereafter, shares of Common Stock issued upon conversion of the Notes will be assigned an unrestricted CUSIP number and will not bear the Restricted Stock Legend (except as provided in Section 2.07(b)(iii)) or any similar legend.

(iv) On or prior to the Company's delivery of the Free Transferability Certificate and afterwards, the Company and the Trustee will comply with the Applicable Procedures and otherwise use reasonable efforts to cause each Global Note to be identified by an unrestricted CUSIP number in the facilities of the Depositary by the date the Free Transferability Certificate is delivered to the Trustee and the Registrar or as promptly as possible thereafter.

(vi) For the avoidance of doubt, a Global Note will not be "Freely Tradable" unless such Global Note is identified by an unrestricted CUSIP number in the facilities of the Depositary.

Section 2.09 *Mutilated, Destroyed, Lost and Stolen Notes* If any mutilated Note is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding. If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless and such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.09, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.09 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.10 *Persons Deemed Owners*. Prior to due presentment of a Note for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Trustee or the Registrar may treat the Person in whose name such Note is registered in the Register as the owner of such Note for the purpose of receiving payment of the principal of such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, the Registrar nor any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

Section 2.11 *Transfer and Exchange*.

(a) *Provisions Applicable to All Transfers and Exchanges*.

(i) Subject to the restrictions set forth in Section 2.07 and this Section 2.11, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

(ii) All Notes issued upon any registration of transfer or exchange in accordance with this Indenture will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(iii) No service charge will be imposed on any Holder of a Physical Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company specifies otherwise, none of the Company, the Trustee, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Note (i) selected for redemption, (ii) that has been surrendered for conversion or (iii) as to which a Fundamental Change Purchase Notice has been delivered and not withdrawn, except to the extent any portion of such Note is not subject to the foregoing.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this

Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, except to the extent required by Section 2.11(c):

(i) all Notes will be represented by one or more Global Notes;

(ii) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Indenture (including the restrictions on transfer set forth in Section 2.07); and

(iii) each Global Note may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Notes*.

(i) Notwithstanding any other provision of this Indenture, each Global Note will be exchanged for Physical Notes if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer permitted under applicable law to continue as Depositary for such Global Note;

and, in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, each Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause each Global Note to be cancelled in accordance with the Applicable Procedures, and the Company, in accordance with Section 2.04, will promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 2.04, will promptly authenticate and deliver, for each beneficial interest in each Global Note so exchanged, an aggregate principal amount of Physical Notes equal to the aggregate principal amount of such beneficial interest, registered in such names and in

such authorized denominations as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 2.07.

(ii) In addition, if (x) the Company, in its sole discretion, notifies the Trustee in writing that it wishes to terminate and exchange all or part of a Global Note for Physical Notes and the beneficial owners of the majority of the principal amount of such Global Note (or portion thereof) to be exchanged consent to such exchange, the Company may exchange all beneficial interests in such Global Note (or portion thereof) for Physical Notes by delivering a written request to the Registrar or (y) an Event of Default has occurred with regard to the Notes represented by the relevant Global Note and such Event of Default has not been cured or waived, any owner of a beneficial interest in a Global Note may deliver a written request to the Registrar to exchange such beneficial interest for Physical Notes.

In such case, (A) the Registrar will deliver notice of such request to the Company and the Trustee, which notice will identify the aggregate principal amount of such beneficial interest and the CUSIP number(s) of the relevant Global Note; (B) the Company will, in accordance with Section 2.04, promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 2.04, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged by such owner, Physical Notes registered in such owner's name having an aggregate principal amount equal to the aggregate principal amount of such beneficial interest and bearing any legends that such Physical Notes are required to bear under Section 2.07(a), and (C) the Registrar, in accordance with the Applicable Procedures, will cause the principal amount of such Global Note to be decreased by the aggregate principal amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Note are so exchanged, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Applicable Procedures.

(d) *Transfer and Exchange of Physical Notes*.

(i) If Physical Notes are issued, a Holder may transfer a Physical Note by: (A) surrendering such Physical Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar; (B) if such Physical Note is a Restricted Note, delivering any documentation that the Company, the Trustee or the Registrar require to ensure that such transfer complies with Section 2.07 and any applicable securities laws; and (C) satisfying all other requirements for such transfer set forth in this Section 2.11 and Section 2.07. Upon the satisfaction of conditions (A), (B) and (C), the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 2.04, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Notes, of any authorized denomination, having like aggregate principal

amount and bearing any restrictive legends required by Section 2.07 and/or the Form of Note attached hereto as Exhibit A.

(ii) If Physical Notes are issued, a Holder may exchange a Physical Note for other Physical Notes of any authorized denominations and aggregate principal amount equal to the aggregate principal amount of the Notes to be exchanged by surrendering such Notes, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02. Whenever a Holder surrenders Notes for exchange, the

Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 2.04, promptly authenticate and deliver the Notes that such Holder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any restrictive legends that such Physical Notes are required to bear under Section 2.07.

(iii) If Physical Notes are issued, a Holder may transfer or exchange a Physical Note for a beneficial interest in a Global Note by (A) surrendering such Physical Note for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02; (B) if such Physical Note is a Restricted Note, delivering any documentation the Company, the Trustee or the Registrar reasonably require to ensure that such transfer complies with Section 2.07 and any applicable securities laws; (C) satisfying all other requirements for such transfer set forth in this Section 2.11 and Section 2.07; and (D) providing written instructions to the Trustee to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate principal amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depositary account to be credited with such increase. Upon the satisfaction of conditions (A), (B), (C) and (D), the Trustee will cancel such Physical Note and cause, or direct the Registrar to cause, in accordance with the Applicable Procedures, the aggregate principal amount of Notes represented by such Global Note to be increased by the aggregate principal amount of such Physical Note, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging Holder in an amount equal to the aggregate principal amount of such Physical Note. If no Global Notes are then Outstanding, the Company, in accordance with Section 2.04, will promptly use reasonable efforts to execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 2.04, authenticate, a new Global Note in the appropriate aggregate principal amount.

Section 2.12 *Cancellation*. The Company at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any

Notes previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, purchase, repurchase, conversion or cancellation in accordance with its customary practices. The Notes acquired by the Company, while held by or on behalf of the Company or any of its Subsidiaries, shall not entitle the Holder thereof to convert the Notes. The Company may not issue new Notes to replace Notes it has paid in full or delivered to the Trustee for cancellation. The Company may from time to time repurchase Notes in open market purchases or negotiated transactions without giving prior notice to Holders. Any Notes purchased by the Company will be retired and no longer Outstanding under this Indenture.

The Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 2.12. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 2.13 *CUSIP Numbers*. In issuing the Notes, the Company may use "CUSIP" numbers (if then generally in use); *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Notes, notice, or elsewhere and; *provided further,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes and that reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.14 *Payment and Computation of Interest*. The Notes will bear cash interest at a rate of 3.00% per year until the Maturity Date. Interest on the Notes will accrue from the most recent date on which interest has been paid or duly provided for or, if no interest has been paid or duly provided for (i) in the case of the Initial Notes, December 21, 2016 or (ii) in the case of the Additional Notes, the date provided under such Notes. Interest will be paid to the Person in whose name a Note is registered at the Close of Business on the Regular Record Date immediately preceding the relevant Interest Payment Date semiannually in arrears on each Interest Payment Date; *provided*, alternate record dates may be established by the Company and the Trustee with respect to any interest not paid on its originally scheduled due date. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. For the avoidance of doubt, the payment, or lack of payment, of interest on Notes surrendered for conversion will be governed by Section 4.03(d).

Section 2.15 *Business Day*. If any Interest Payment Date, the Maturity Date, any Redemption Date or any Fundamental Change Purchase Date falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay.

ARTICLE 3.
REPURCHASE AT THE OPTION OF THE HOLDERS

Section 3.01 *Purchase at Option of Holders upon a Fundamental Change*. If a Fundamental Change occurs at any time, then each Holder shall have the right, at such Holder's option, to require the Company to purchase for cash all or any portion of such Holder's Notes such that the remaining principal amount of each Note that is not purchased in full equals $1,000 or an integral multiple of $1,000 in excess thereof, on a date (the "**Fundamental Change Purchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date on which the Company delivers the Fundamental Change Company Notice, at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but excluding, the Fundamental Change Purchase Date (the "**Fundamental Change Purchase Price**"); *provided*, *however*, that if the Company purchases a Note on a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the Interest Payment Date corresponding to such Regular Record Date, the Company shall instead pay the full amount of such accrued and unpaid interest on such Note on the Interest Payment Date to the Holder of record of such Note as of such Regular Record Date and the Fundamental Change Purchase Price shall then be equal to 100% of the principal amount of the Note the Company purchases on such Fundamental Change Purchase Date; *provided, further,* that the Fundamental Change Purchase Date may be postponed to allow the Company to comply with applicable law as a result of changes to such applicable law occurring after the date hereof. Notwithstanding the foregoing, there shall be no purchase of any Notes pursuant to this Section 3.01 if the principal amount of the Notes has been

accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Purchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Notes) and shall deem to be cancelled any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures, in which case, upon such return or cancellation, as the case may be, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.02 *Fundamental Change Company Notice*.

General. On or before the tenth (10^{th}) day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of the Notes, the Trustee and the Paying Agent (in the case of any Paying Agent other than the Trustee) a written notice (the "**Fundamental Change Company Notice**") of the occurrence of such Fundamental Change and of the purchase right at the option of the Holders arising as a result thereof. Such notice shall be sent by first class mail or, in the case of any Global Notes, in accordance with the Applicable Procedures for providing notices. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a press release and publish such information on the Company's website. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the Effective Date of the Fundamental Change;

(iii) the last date on which a Holder of Notes may exercise the purchase right pursuant to Section 3.01;

(iv) the Fundamental Change Purchase Price;

(v) the Fundamental Change Purchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(vii) the applicable Conversion Rate and any adjustments to the applicable Conversion Rate resulting from the Fundamental Change;

(viii) that such Fundamental Change also constitutes a Make-Whole Fundamental Change;

(ix) if applicable, that the Notes with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with this Indenture;

(x) that the Holder must exercise the purchase right prior to the Fundamental Change Expiration Time;

(xi) that the Holder shall have the right to withdraw any Notes surrendered for purchase prior to the Fundamental Change Expiration Time; and

(xii) the procedures that Holders must follow to require the Company to purchase their Notes.

(b) No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to Section 3.01.

(c) At the Company's written request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company; *provided*, *further* that the Company shall have delivered to the Trustee, at least five (5) Business Days before the Fundamental Change Company Notice is required to be mailed or delivered (or such shorter period agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the complete form of such notice and the information to be stated in such notice. Neither the Trustee nor the Paying Agent shall be responsible for determining if a Fundamental Change has occurred or for delivering a Fundamental Change Company Notice to Holders.

Section 3.03 *Repurchase Procedures*.

(a) Purchases of Notes under Section 3.01 shall be made, at the option of the Holder thereof, upon:

(i) if the Notes to be purchased are Physical Notes, delivery to the Paying Agent by the Holder of a duly completed notice (the "**Fundamental Change Purchase Notice**"), in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, together with the Notes duly endorsed for transfer, prior to Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date, (the "**Fundamental Change Expiration Time**"); and

(ii) if the Notes to be purchased are Global Notes, delivery of the Notes, by book-entry transfer, in compliance with the Applicable Procedures and the satisfaction of any other requirements of the Depositary in connection with delivering beneficial interests in a Global Note for purchase, by the Fundamental Change Expiration Time.

The Fundamental Change Purchase Notice in respect of any Notes to be purchased shall state:

(i) if certificated, the certificate numbers of such Notes;

(ii) the portion of the principal amount of such Notes to be purchased, which must be such that the principal amount of each Note that is not to be purchased in full equals $1,000 or an integral multiple of $1,000 in excess thereof; and

(iii) that such Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and this Indenture.

Notwithstanding anything to the contrary contained in this Article 3, the Company will not be required to give the Fundamental Change Purchase Notice or to repurchase the Notes as described in this Article 3 upon a Fundamental Change pursuant to clause (2) of the definition thereof (or a Fundamental Change pursuant to clause (2) which also results in a Fundamental Change pursuant to clause (1)) if (1) such Fundamental Change results in the Notes becoming convertible (pursuant to the provisions of Section 4.07) into an amount of cash per $1,000 principal amount of Notes greater than the Fundamental Change Purchase Price per $1,000 principal amount of Notes (assuming the maximum amount of accrued interest would be payable based on the latest possible Fundamental Change Purchase Date) and (2) the Company provides timely notice of the Holders' right to convert their Notes based on such Fundamental Change as described above under Section 4.01(b)(iv).

(b) *Notice to Company*. The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written notice of withdrawal thereof.

Section 3.04 *Effect of Fundamental Change Purchase Notice*. Upon receipt by the Paying Agent of a Fundamental Change Purchase Notice specified in Section 3.03, the Holder of the

Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn in accordance with Section 3.05) thereafter be entitled to receive solely the Fundamental Change Purchase Price in cash with respect to such Note (and any previously accrued and unpaid interest on such Note). Such Fundamental Change Purchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on the later of (x) the applicable Fundamental Change Purchase Date (provided the conditions in this Article 3 have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01.

Section 3.05 *Withdrawal of Fundamental Change Purchase Notice*. A Fundamental Change Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the Fundamental Change Expiration Time specifying:

(a) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted;

(b) if certificated, the certificate numbers of the withdrawn Notes; and

(c) the principal amount, if any, of each Note that remains subject to the Fundamental Change Purchase Notice which must be such that the principal amount not to be purchased equals $1,000 or an integral multiple of $1,000 in excess thereof;

provided, however, that if the Notes are Global Notes, the notice must comply with the Applicable Procedures.

The Paying Agent will promptly return to the respective Holders thereof any Physical Notes with respect to which a Fundamental Change Purchase Notice, has been withdrawn in compliance with the provisions of this Section 3.05.

Section 3.06 *Deposit of Fundamental Change Purchase Price*. Prior to 11:00 a.m., New York City time, on the Fundamental Change Purchase Date the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Purchase Price of all the Notes or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. If the Paying Agent holds cash sufficient to pay the Fundamental Change Purchase Price of the Notes for which a Fundamental Change Purchase Notice has been delivered and not withdrawn in accordance with this Indenture on the Fundamental Change Purchase Date then as of such Fundamental Change Purchase Date (a) such Notes will cease to be Outstanding and interest will cease to accrue thereon (whether or not book-entry transfer of such Notes is made or such Notes have been delivered to the Paying Agent) and (b) all other rights of the Holders in respect thereof will terminate (other than the right to receive the Fundamental Change Purchase Price and any previously accrued and unpaid interest on such Notes upon delivery or book-entry transfer of such Notes).

Section 3.07 *Notes Purchased in Whole or in Part*. Any Note that is to be purchased pursuant to this Article 3, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and, to the extent that only a part of the Note so surrendered is to be purchased, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not purchased.

Section 3.08 *Covenant To Comply with Applicable Laws upon Purchase of Notes*. In connection with any offer to purchase Notes under Sections 3.01, the Company shall, in each case if required by law (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, (ii) file a Schedule TO or any other required schedule under the Exchange Act and (iii) otherwise comply with all U.S. federal or state securities laws applicable to the Company in connection with such purchase offer, in each case, so as to permit the rights and obligations under this Article 3 to be exercised in the time and in the manner specified under this Article 3.

Section 3.09 *Repayment to the Company*. To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.06 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof that the Company is obligated to purchase as of the Fundamental Change Purchase Date then, following the Fundamental Change Purchase Date the Paying Agent shall promptly return any such excess to the Company.

Section 3.10 *Satisfaction of the Company's Fundamental Change Purchase Obligations.* Notwithstanding anything to the contrary contained in this Article 3, in the case of a Fundamental Change pursuant to clauses (1) and/or (2) of the definition thereof, the Company will not be required to make an offer to repurchase Notes upon the occurrence of such Fundamental Change as would otherwise be required to the extent, and solely to the extent, that the other party to such Fundamental Change (or its Affiliate) (i) makes such an offer to purchase the Notes in the same manner, at the same time and otherwise in compliance with the requirements set forth herein that would be applicable to such an offer by the Company (including, without limitation, the requirement to comply with applicable securities laws) and (ii) purchases all Notes properly tendered and not validly withdrawn under such offer to purchase all in compliance with the requirements set forth herein (including, without limitation, the requirement to pay the applicable Fundamental Change Purchase Price on the later of the applicable Fundamental Change Purchase Date and the time of book-entry transfer or delivery of the relevant Notes); *provided* that, the Company will continue to be obligated to (x) deliver the applicable Fundamental Change Company Notice to the Holders, the Trustee and the paying Agent (which Fundamental Change Company Notice, in addition to the requirements set forth above, will state that such party will make such an offer to purchase the Notes) and to, simultaneously with such Fundamental Change Company Notice, issue a press release containing such information, which will also be available on the Company's website, in each case, in the event such party fails to give such notice or issue such press release (and make it available on its website), as applicable, (y) comply with applicable securities laws in connection with any such

purchase and (z) pay the applicable Fundamental Change Purchase Price on the later of the applicable Fundamental Change Purchase Date and the time of book-entry transfer or delivery of the relevant Notes in the event such party fails to make such payment in such amount at such time. The provisions of this paragraph will be limited to the matters set forth above and shall not be deemed or otherwise construed to (a) limit any of the Company's obligations under this Indenture or the Notes (except solely to the extent expressly set forth in this paragraph and subject to the conditions set forth above in this paragraph) or (b) prejudice any right, power or remedy which the Trustee or Holders of the Notes may then have or may have in the future under or in connection with this Indenture or the Notes.

ARTICLE 4.
CONVERSION

Section 4.01 *Right To Convert.* (a) Subject to and upon compliance with the provisions of the Indenture, each Holder shall have the right, at such Holder's option, to convert any or all of its Notes, or any portion thereof, such that the principal amount that remains Outstanding of each Note that is not converted in full equals $1,000 or an integral multiple of $1,000 in excess thereof, into the Settlement Amount determined in accordance with Section 4.03(a)(ii) hereof, (x) prior to the Close of Business on the Business Day immediately preceding September 15, 2023, only upon satisfaction of one or more of the conditions described in Section 4.01(b) hereof, and (y) on or after September 15, 2023, at any time prior to the Close of Business on the second Business Day immediately preceding the Maturity Date regardless of the conditions described in Section 4.01(b) hereof.

(b) (i) Prior to the Close of Business on the Business Day immediately preceding September 15, 2023, a Holder may surrender all or portion of its Notes for conversion during any fiscal quarter commencing after March 31, 2017 (and only during such fiscal quarter) if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding fiscal quarter is greater than or equal to 130% of the applicable Conversion Price in effect on each applicable Trading Day.

(ii) Prior to the Close of Business on the Business Day immediately preceding September 15, 2023, a Holder may surrender all or portion of its Notes for conversion during the five consecutive Business Day period after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per $1,000 principal amount of Notes, as determined following a request by a Holder in accordance with the procedures set forth in this Section 4.01(b)(ii), for each Trading Day of such Measurement Period was less than 98% of the product of (x) the Last Reported Sale Price of the Common Stock on such Trading Day and (y) the Conversion Rate in effect on such Trading Day. The Trading Price shall be determined by the Company or the Bid Solicitation Agent, as applicable, pursuant to this Section 4.01(b)(ii) and the definition of "Trading Price" set forth in Section 1.01 hereof. The Company shall provide written notice to the Bid Solicitation Agent of the three independent nationally recognized securities dealers selected by the Company in accordance with the

definition of Trading Price, along with the appropriate contact information for each, and shall direct those securities dealers to provide bids to the Bid Solicitation Agent. The Bid Solicitation Agent (if other than the Company) shall have no obligation to solicit bids in respect of the Notes unless the Company has requested that it do so; and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to solicit bids in respect of the Notes) unless a Holder of a Note provides it with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of (x) the Last Reported Sale Price of the Common Stock on such Trading Day and (y) the Conversion Rate in effect on such Trading Day. The Company shall instruct the Bid Solicitation Agent (if other than the Company) to solicit such bids and the Company shall determine the Trading Price per $1,000 principal amount of the Notes (or, if the Company is acting as Bid Solicitation Agent, it shall determine the Trading Price per $1,000 principal amount of the Notes) beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes for a Trading Day is greater than or equal to 98% of the product of (x) the Last Reported Sale Price of the Common Stock on such Trading Day and (y) the Conversion Rate in effect on such Trading Day. Whenever the condition to conversion set forth in this Section 4.01(b)(ii) has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee). If, at any time after the condition to conversion set forth in this Section 4.01(b)(ii) has been met, the condition to conversion set forth in this Section 4.01(b) (ii) ceases to be met, the Company will so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee). The Trustee shall have no obligation to determine the Trading Price of the Notes.

(iii) If the Company (x) issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than any issuance of any rights, options or warrants issued under a stockholder rights plan that are (A) transferable with shares of Common Stock, including shares of Common Stock delivered upon conversion, and (B) not exercisable until the occurrence of a triggering event; *provided* that such rights, options or warrants will be deemed issued under this subclause (x) upon the separation of such rights, options or warrants from the Common Stock, or upon the occurrence of such triggering event) entitling them for a period of not more than 60 calendar days after the date of such issuance to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or (y) distributes to all or substantially all holders of the Common Stock the Company's assets, debt securities or rights to purchase the Company's securities (other than (A) rights described in the immediately preceding subclause (x) or (B) any issuance of any rights, options or warrants issued under a stockholder rights plan that are (1) transferable with shares of Common Stock, including shares of Common Stock delivered upon conversion, and (2) not exercisable until the occurrence of a triggering event), which distribution has a

per share value, as reasonably determined by the Company in good faith and in a commercially reasonable manner, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the date of announcement of such distribution, then, in either case, the Company must deliver notice of such issuance or distribution, and of the Ex-Dividend Date for such issuance or distribution, to the Holders at least 65 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. After the Company has delivered such notice, Holders may surrender their Notes for conversion at any time until the earlier of (a) Close of Business on the Business Day immediately preceding such Ex-Dividend Date and (b) the Company's announcement that such issuance or distribution will not take place, even if the Notes are not otherwise convertible at such time.

(iv) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs, (regardless of whether the Holders would have the right to require the Company to purchase their Notes pursuant to Article 3), or if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of its assets, in each case, pursuant to which its Common Stock would be converted into cash, securities or other assets, other than a merger effected solely for the purpose of changing the Company's jurisdiction of incorporation solely within the United States that (I) does not otherwise constitute a Fundamental Change or a Make-Whole Fundamental Change and (II) results in a reclassification, conversion or exchange of outstanding shares of the Company's Common Stock solely into shares of common stock of the surviving entity which shares are listed on the New York Stock Exchange, NYSE MKT, The NASDAQ Global Market, The NASDAQ Global Select Market or The NASDAQ Capital Market (or any of their respective successors), and such successor entity is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the effective date of the transaction until 35 Trading Days after such effective date or, if such transaction also constitutes a Fundamental Change, until the related Fundamental Change Purchase Date. The Company will notify holders, the trustee and the Conversion Agent (if other than the Trustee) no later than the Business Day following the effective date of such transaction the Company shall deliver notice of such specified corporate transaction or event to the Holders.

(v) If the Company calls a Holder's Notes for redemption pursuant to Article 11, such Holder shall have the right to convert such Holder's Notes until the Close of Business on the second Business Day immediately preceding the applicable Redemption Date (or, if the Company defaults in the payment of the Redemption Price in respect of such redemption, such date on which such default is no longer continuing), after which time such right to convert will expire. The Company shall increase the Conversion Rate for Holders who elect to convert their Notes in connection with a redemption if required by Section 4.06.

The Trustee shall have no duty to determine whether any of the conditions to conversion have occurred.

Section 4.02 *Conversion Procedures*.

(a) Each Note shall be convertible at the office of the Conversion Agent and, if applicable, in accordance with the Applicable Procedures.

(b) To exercise the conversion privilege with respect to a beneficial interest in a Global Note, the Holder must comply with the Applicable Procedures for converting a beneficial interest on a Global Note and pay the funds, if any, required by Section 4.02(f) and any taxes or duties if required pursuant to Section 4.02(g), and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depositary.

To exercise the conversion privilege with respect to any Physical Notes, the Holder of such Physical Notes shall:

(i) complete and manually sign a conversion notice in the form set forth in the Form of Notice of Conversion (the "**Conversion Notice**") or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Physical Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents;

(iv) if required, pay all transfer or similar governmental charges or duties as set forth in Section 4.02(g); and

(v) if required, make any payment required under Section 4.02(f).

If a Note has been submitted for repurchase pursuant to a Fundamental Change Purchase Notice such Note may not be converted except to the extent such Note has been withdrawn by the Holder and is no longer submitted for repurchase pursuant to a Fundamental Change Purchase Notice or unless such Fundamental Change Purchase Notice is withdrawn in accordance with Section 3.05 hereof prior to the relevant Fundamental Change Expiration Time.

For any Note, the date on which the Holder of such Note satisfies all of the applicable requirements set forth above with respect to such Note shall be the "**Conversion Date**" with respect to such Note.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion at the Close of Business on the applicable Conversion Date; *provided*, *however*, that except to the extent required by Section 4.04 hereof, the Person in whose name any shares of Common Stock shall be issuable upon conversion, if any, shall be treated as a stockholder of record (i) as of the Close of Business on the last VWAP Trading Day of the

applicable Observation Period in the case of Combination Settlement and (ii) as of the Close of Business on the Conversion Date in the case of Physical Settlement. For the avoidance of doubt, until a Holder is deemed to become the holder of record of shares of Common Stock issuable upon conversion of such Holder's Notes as contemplated in the immediately preceding sentence, such Holder shall not have any rights as a holder of the Common Stock with respect to the shares of Common Stock issuable upon conversion of such Notes. At the Close of Business on the Conversion Date for a Note, the converting Holder shall no longer be the Holder of such Note.

(c) *Endorsement*. Any Notes surrendered for conversion shall, unless shares of Common Stock issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or its duly authorized attorney.

(d) *Physical Notes*. If any Physical Notes in a denomination greater than $1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Physical Notes so surrendered, without charge, new Physical Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Physical Notes.

(e) *Global Notes*. Upon the conversion of a beneficial interest in Global Notes, the Conversion Agent shall make a notation in its records as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) *Interest Due Upon Conversion*. If a Holder converts a Note after the Close of Business on a Regular Record Date but prior to the Interest Payment Date corresponding to such Regular Record Date, such Holder must accompany such Note with an amount of cash equal to the amount of interest that will be payable on such Note on the corresponding Interest Payment Date; *provided*, *however*, that a Holder need not make such payment (1) if the Conversion Date follows the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date and the relevant Conversion Date occurs after such Regular Record Date and on or prior to the second Business Day immediately following such Interest Payment Date (3) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date and the relevant Conversion Date occurs after such Regular Record Date and on or prior to such Interest Payment Date; or (4) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Notes.

(g) *Taxes Due upon Conversion*. If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion, unless the tax is due because the

Holder requests that any shares be issued in a name other than the Holder's name, in which case the Holder will pay that tax.

Section 4.03 *Settlement Upon Conversion.*

(a) *Settlement*. Subject to this Section 4.03 and Sections 4.04 and 4.06 hereof, upon conversion of any Note, the Company shall pay or deliver, as the case may be, to converting Holders, in full satisfaction of its conversion obligation under Section 4.01 hereof, in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount consisting of, at the election of the Company, solely cash ("**Cash Settlement**"), solely shares of Common Stock (together with cash in lieu of any fractional share of Common Stock pursuant to Section 4.03(b)) ("**Physical Settlement**") or a combination of cash and shares of Common Stock ("**Combination Settlement**").

(i) *Settlement Election*. All conversions occurring on or after September 15, 2023 shall be settled using the same Settlement Method. Prior to September 15, 2023, the Company will use the same Settlement Method for all conversions occurring on the same Conversion Date. In addition, the Company will use the same Settlement Method for all conversions that occur during the applicable Redemption Period, as specified in the Redemption Notice. Except for any conversions that occur (i) on or after September 15, 2023, or (ii) during any Redemption Period, the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates. If the Company elects a Settlement Method (a "**Settlement Election**"), unless the Conversion Date occurs during any Redemption Period, and a Specified Dollar Amount, if applicable (a "**Specified Dollar Amount Election**"), the Company shall provide to the Holders so converting and the Trustee a notice of such Settlement Method (each such notice, a "**Settlement Election Notice**") or such Specified Dollar Amount (each such notice, a "**Specified Dollar Amount Election Notice**"), no later than the Close of Business on the second Scheduled Trading Day immediately following the related Conversion Date (or, in the case of any conversions occurring on or after September 15, 2023, no later than September 15, 2023). If the Company does not timely elect a Settlement Method, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement, and the Company shall be deemed to have elected Combination Settlement in respect of its conversion obligation under Section 4.03 hereof, and the Specified Dollar Amount per $1,000 principal amount of Notes shall be deemed to be $1,000. If the Company elects Combination Settlement but does not

timely notify converting Holders of the Specified Dollar Amount per $1,000 principal amount of Notes, such Specified Dollar Amount will be deemed to be $1,000.

(ii) *Settlement Amount*. The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects Physical Settlement, the Company shall deliver to the converting Holder, in respect of each $1,000 principal amount of its Notes being converted, a number of shares of Common Stock equal to the applicable Conversion Rate, together with cash in lieu of any fractional shares of Common Stock pursuant to Section 4.03(b);

(B) if the Company elects Cash Settlement, the Company shall pay to the converting Holder, in respect of each $1,000 principal amount of its Notes being converted, cash in an amount equal to the sum of the Daily Conversion Values for each of the 60 consecutive VWAP Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) Combination Settlement, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of its Notes being converted, an amount of cash and number of shares of Common Stock, if any, equal to the sum of the Daily Settlement Amounts for each of the 60 consecutive VWAP Trading Days during the related Observation Period.

(iii) *Delivery Obligation*. The Company shall pay or deliver, as the case may be, the Settlement Amount due in respect of its conversion obligation under Section 4.03 hereof, (i) on the third Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement and (ii) on the third Business Day immediately following the last VWAP Trading Day of the related Observation Period, if the Company elects Cash Settlement or Combination Settlement.

(b) *Fractional Shares*. Notwithstanding the foregoing, the Company will not issue fractional shares of Common Stock as part of the Settlement Amount due with respect to any converted Note. Instead, if any Settlement Amount includes a fraction of a share of the Common Stock, the Company will, in lieu of delivering such fraction of a share of Common Stock, pay an amount of cash equal to the product of such fraction of a share and (i) in a Physical Settlement, the Daily VWAP on the relevant Conversion Date, or if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day or (ii) in a Combination Settlement, the Daily VWAP on the last VWAP Trading Day of the relevant Observation Period (subject to Section 4.03(c) immediately below).

(c) *Conversion of Multiple Notes by a Single Holder*. If a Holder surrenders more than one Note for conversion on a single Conversion Date or with respect to which a single Observation Period (including, for the avoidance of doubt, the same VWAP Trading Days therein) would apply, the Company will calculate the amount of cash and the number of shares of Common Stock due with respect to such Notes as if such Holder had surrendered for conversion one Note having an aggregate principal amount equal to the sum of the principal amounts of each of the Notes surrendered for conversion by such Holder on the same Conversion Date or, in the case of a Global Note, otherwise in accordance with the Applicable Procedures.

(d) *Settlement of Accrued Interest and Deemed Payment of Principal*. If a Holder converts a Note, the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and the Company's delivery or payment, as the case may be, of cash, shares of Common Stock or a combination of cash and shares of Common Stock into which a Note is convertible will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding, the Conversion Date; *provided*, *however*, that subject to Section 4.02(f), if a Holder converts a Note after the Close of Business on a Regular Record Date and prior to the corresponding Interest Payment Date, the Company will still be obligated to pay the interest due on such Interest Payment Date to the Holder of such Note on such Regular Record Date.

As a result, except as otherwise provided in the proviso to the immediately preceding sentence, any accrued and unpaid interest with respect to a converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, if the Settlement Amount for any Note includes both cash and shares of the Common Stock, accrued and unpaid interest will be deemed to be paid first out of the amount of cash delivered upon such conversion.

(e) *Notices*. Whenever a Conversion Date occurs with respect to a Note, the Conversion Agent will, as promptly as possible, and in no event later than the Open of Business on the Business Day immediately following such Conversion Date, deliver to the Company and the Trustee, if it is not then the Conversion Agent, notice that a Conversion Date has occurred, which notice will state such Conversion Date, the principal amount of Notes converted on such Conversion Date and the names of the Holders that converted Notes on such Conversion Date.

On the first Business Day immediately following the last VWAP Trading Day of the Observation Period applicable to any Note surrendered for conversion in a Cash Settlement or a Combination Settlement, the Company will deliver a written notice to the Conversion Agent and the Trustee (if not also the Conversion Agent) stating the amount of cash and the number of shares of Common Stock, if any, that the Company is obligated to pay or deliver, as the case may be, to satisfy its conversion obligation with respect to each Note converted on such Conversion Date.

(f) *Limitation on Delivery of Shares*. Notwithstanding any other provisions hereof, no Holder (including, for this purpose, the owner of a beneficial interest in a Global Note) may convert any $1,000 principal amount of Notes or be entitled to take any delivery of shares of Common Stock upon conversion thereof to the extent (but only to the extent) that, after such receipt of any shares of Common Stock upon the conversion, such Holder's Beneficial Ownership Percentage would exceed 19.9%. Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that, after such delivery, the Beneficial Ownership Percentage of such Holder would exceed 19.9%. If any delivery owed to a holder hereunder is not made, in whole or in part, as a result of this provision, the Company's obligation to make such delivery shall not be

extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than one Business Day after, such Holder gives notice to the Company that, after such delivery, that Holder's Beneficial Ownership

Percentage would not exceed 19.9%. If any conversion of a Note hereunder would (assuming Physical Settlement of such converted Note, notwithstanding any different actual Settlement Method applicable thereto) result in the Beneficial Ownership Percentage of the Holder thereof, after such receipt of any shares upon such conversion, exceeding 19.9%, then such Holder will be required to specify such Holder's then-current Beneficial Ownership Percentage, prior to receipt of any shares of Common Stock upon such conversion, in the related Conversion Notice.

Section 4.04 *Adjustment of Conversion Rate*. The Conversion Rate will be adjusted as described in this Section 4.04, except that the Company shall not make any adjustment to the Conversion Rate if Holders participate (other than in the case of a share split or share combination) at the same time and upon the same terms as holders of the Common Stock and as a result of holding the Notes, in any of the transactions described below without having to convert their Notes, as if they held a number of shares of Common Stock equal to the applicable Conversion Rate, *multiplied by* the principal amount of Notes held by such Holder *divided by* $1,000.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or such effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or such effective date, as applicable (before giving effect to any such dividend or distribution); and

OS_1 = the number of shares of Common Stock outstanding immediately after the Open of Business on such Ex-Dividend Date or effective date immediately after giving effect (or, in the case of a dividend or distribution, pro forma effect) to such dividend, distribution, share split or share combination, as applicable.

Any adjustment made under this Section 4.04(a) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or

immediately after the Open of Business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them, for a period of not more than 60 calendar days after the date of such issuance, to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.04(b) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are not delivered upon the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock

actually delivered. If such rights, options or warrants are not so issued, or if such rights, options or warrants are not exercised prior to their expiration, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such issuance had not occurred.

For purposes of this Section 4.04(b) and Section 4.01(b)(iii)(x) hereof, in determining whether any rights, options or warrants entitle the holders of the Common Stock to subscribe for or purchase shares of the Common Stock at a price per share less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Company in good faith and in a commercially reasonable manner.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding:

(i) dividends or distributions, rights options or warrants described in Section 4.04(a) hereof or Section 4.04(b) hereof;

(ii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 4.04(d) below shall apply;

(iii) Spin-Offs as to which the provisions set forth below in this Section 4.04(c) shall apply; and

(iv) dividends or distributions of Reference Property upon conversion of, or exchange for, Common Stock pursuant to any Share Exchange Event (as defined below under Section 4.07);

(any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the "**Distributed Property**"), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Company in good faith and in a commercially reasonable manner) of Distributed Property with respect to each outstanding share of the Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

If "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of Notes shall receive, in respect of each $1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the record date for the distribution.

Any increase made pursuant to the formula above will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution (including a Spin-Off) is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

With respect to an adjustment pursuant to this Section 4.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to any Subsidiaries of the Company or business units of the Company, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the distribution) on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such Spin-Off;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period after, but excluding, the effective date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

If a Holder converts a Note, Cash Settlement or Combination Settlement is applicable to such Note and the first VWAP Trading Day of the Observation Period applicable to such Note occurs after the first Trading Day of the Valuation Period for a Spin-Off, but on or before the last Trading Day of the Valuation Period for such Spin-Off, then the reference in the above definition of "FMV_0" to "10" Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the first Trading Day of the Valuation Period for such Spin-Off to, but excluding, the first VWAP Trading Day of such Observation Period. If a Holder converts a Note, Cash Settlement or Combination Settlement is applicable to such Note and one or more VWAP Trading Days of the Observation Period for such Note occurs on or after the Ex-Dividend Date for a Spin-Off but on or prior to the first Trading Day of the Valuation Period for such Spin-Off, such Observation Period will be suspended from, and including, the first such VWAP Trading Day to, and including, the first Trading Day of the Valuation Period for such Spin-Off and will resume immediately after the first Trading Day of the Valuation Period for such Spin-Off, with the reference in the above definition of "FMV_0" to "10 consecutive" Trading Days deemed replaced with a reference to "one (1)" Trading Day.

For purposes of the second adjustment formula set forth in this Section 4.04(c), (i) the Last Reported Sale Price of any Capital Stock or similar equity interest shall be calculated in a manner analogous to that used to calculate the Last Reported Sale Price of the Common Stock in the definition of "Last Reported Sale Price" set forth in Section 1.01 hereof, (ii) whether a day is a Trading Day (and whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for such Capital Stock or similar equity interest shall be determined in a manner analogous to that used to determine whether a day is a Trading Day (or whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for the Common Stock, and (iii) whether a day is a Trading Day to be included in a Valuation Period will be determined based on whether a day is a Trading Day for both the Common Stock and such Capital Stock or similar equity interest.

Subject to Section 4.04(g), for the purposes of this Section 4.04(c), rights, options or warrants distributed to all or substantially all holders of the Common Stock entitling them to acquire the Company's Capital Stock or other securities, (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"): (1) are deemed to be transferred with such shares of Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 4.04(c) (and no adjustment to the Conversion Rate under this

Section 4.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.04(c). If any such rights, options or warrants, distributed prior to the first date of original issuance of the Initial Notes are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.04(c) was made, (1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any Holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of Section 4.04(a) hereof, Section 4.04(b) hereof and this Section 4.04(c), if any dividend or distribution to which this Section 4.04(c) applies includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 4.04(a) hereof also applies (the "**Clause A Distribution**"); or

(B) an issuance of rights, options or warrants entitling holders of the Common Stock to subscribe for or purchase shares of the Common Stock to which Section 4.04(b) hereof also applies (the "**Clause B Distribution**"),

then (i) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a distribution to which this Section 4.04(c) applies (the "**Clause C Distribution**") and any Conversion Rate adjustment required to be made under this Section 4.04(c) with respect to such Clause C Distribution shall be made, (ii) the Clause B Distribution, if any, shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.04(b) hereof with respect thereto shall then be made,

except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause B Distribution and the Clause A Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (B) any shares of Common Stock included in the Clause A Distribution

or the Clause B Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date" within the meaning of Section 4.04(b) hereof, and (iii) the Clause A Distribution, if any, shall be deemed to immediately follow the Clause C Distribution or the Clause B Distribution, as the case may be, except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution, and (B) any shares of Common Stock included in the Clause A Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date or such effective date" within the meaning of Section 4.04(a) hereof.

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share of Common Stock that the Company distributes to holders of the Common Stock.

If "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder shall receive, for each $1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the record date for such cash dividend or distribution. Such increase shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and

value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Offer Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Offer Expiration Date;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the Offer Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Company in good faith and in a commercially reasonable manner) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the expiration time of the tender or exchange offer on the Offer Expiration Date (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the expiration time of the tender or exchange offer on the Offer Expiration Date (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Date.

(f) *Special Settlement Provisions*.

In addition, notwithstanding anything to the contrary herein, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date as described in Sections 4.04(a) through (e) hereof, and a Holder that has converted its Notes with a Conversion Date occurring on or after such Ex-Dividend Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date as described under Section 4.02 hereof based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the foregoing Conversion Rate adjustment provisions, the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the registered owner of the shares of Common Stock on an

unadjusted basis and participated in the related dividend, distribution or other event giving rise to such adjustment.

In addition, notwithstanding anything to the contrary herein, if, in the case of any conversion of a Note to which Combination Settlement applies, on any VWAP Trading Day during the Observation Period corresponding to the Conversion Date for such Note, shares of Common Stock are deliverable as part of the Daily Settlement Amount for such VWAP Trading Day, and

(i) the record date for any issuance, dividend or distribution, the effective date for any share split or combination or the Offer Expiration Date for any tender or exchange offer by the Company or its Subsidiaries that, in each case, would require an adjustment to the Conversion Rate pursuant to any of Section 4.04(a) through (e) occurs prior to the Company's delivery of such shares of Common Stock to the converting Holder;

(ii) the applicable Conversion Rate for such VWAP Trading Day will not reflect such adjustment; and

(iii) the shares of Common Stock that the Company shall deliver to the converting Holder with respect to such VWAP Trading Day are not entitled to participate in the relevant event (because such shares were not held by such Holder on the related record date, effective date, Offer Expiration Date or otherwise),

then the Company will (i) in the case of any such issuance, dividend or distribution, deliver to the Holder of such Note, on the date on which such issuance, dividend or distribution is paid or made, the consideration that a Holder of a number of shares equal to the number of shares included in the Daily Settlement Amount for such VWAP Trading Day would be entitled to receive in respect of such issuance, dividend or distribution or (ii) in the case of any such share split or combination, tender offer or exchange offer, adjust the number of shares that the Company delivers to such Holder as part of the Daily Settlement Amount for such VWAP Trading Day in a manner that appropriately (as determined by the Company in consultation with a nationally recognized independent investment banking firm, which may be one of the Initial Purchasers, retained for this purpose) reflects the relevant transaction or event.

(g) *Poison Pill*. If a Holder converts a Note, to the extent that the Company has a rights plan in effect, if Physical Settlement applies to such Note, on the Conversion Date applicable to such Note, and if Combination Settlement applies to such Note on any VWAP Trading Day in the Observation Period applicable to such Note, the Holder converting such Note will receive, in addition to any shares of Common Stock otherwise received in connection with such conversion on such Conversion Date or such VWAP Trading Day, as the case may be, the rights under the rights plan, unless prior to such Conversion Date or such VWAP Trading Day, as the case may be, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of the Common Stock, Distributed Property as described in Section 4.04(c) hereof,

subject to readjustment in the event of the expiration, termination or redemption of such rights.

(h) *Deferral of Adjustments*. Notwithstanding anything to the contrary herein, the Company will not be required to adjust the Conversion Rate unless such adjustment would require an increase or decrease of at least one percent; *provided, however*, that any such minor adjustments that are not required to be made will be carried forward and taken into account in any subsequent adjustment, and *provided, further*, that any such adjustment of less than one percent that has not been made shall be made upon the occurrence of (i) the Effective Date for any Make-Whole Fundamental Change and/or Fundamental Change, (ii) in the case of any Note to which Physical Settlement applies or to which Cash Settlement applies following a replacement of Common Stock by the Reference Property consisting solely of cash, prior to the Close of Business on the Conversion Date, (iii) in the case of any Note to which Cash Settlement or Combination Settlement applies (other than as described in the immediately preceding clause (ii)), prior to the Open of Business on the first VWAP Trading Day of the applicable Observation Period and each subsequent VWAP Trading Day of the Observation Period and (iv) prior to the Close of Business on any other date on which the Conversion Rate is referred to for purpose of determining the consideration deliverable upon settlement of a Note, (v) the Company's issuance of a Redemption Notice, and (vi) September 15, 2023. In addition, the Company shall not account for such deferrals when determining whether any of the conditions to conversion have been satisfied or what number of shares of Common Stock a Holder would have held on a given day had it converted its Notes.

(i) *Limitation on Adjustments*. Except as stated in this Section 4.04, the Company will not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. If, however, the application of the formulas in Sections 4.04(a) through (e) hereof would result in a decrease in the Conversion Rate, then, except to the extent of any readjustment to the Conversion Rate, no adjustment to the Conversion Rate will be made (other than as a result of a reverse share split or share combination).

(j) For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 4.05 *Discretionary and Voluntary Adjustments*.

(a) *Discretionary Adjustments*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs or any function thereof over a span of multiple days (including during an Observation Period), the Company will make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the effective date, Ex-Dividend Date or Offer

Expiration Date of the event occurs, at any time during the period when such Last Reported Sale Prices, the Daily VWAPs or function thereof is to be calculated. For the avoidance of doubt, the adjustments made pursuant to this paragraph will be made, solely to the extent the Company determines in its reasonable judgment that any such adjustment is appropriate, without duplication of any adjustment made pursuant to the provisions set forth under Section 4.04.

(b) *Voluntary Adjustments*. To the extent permitted by applicable law and applicable requirements of The NASDAQ Global Market, the Company is permitted (but not required) to increase the Conversion Rate of the Notes (i) by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest or (ii) to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

Section 4.06 *Adjustment to Conversion Rate Upon Conversion in Connection with a Make-Whole Fundamental Change or a Redemption Notice*.

(a) *Increase in the Conversion Rate*. If (i) a Make-Whole Fundamental Change occurs or (ii) the Company issues a Redemption Notice and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or Redemption Notice, as applicable, then the Company shall, to the extent provided herein, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described in this Section 4.06. A conversion of Notes shall be deemed for these purposes to be "in connection with" (x) a Make-Whole Fundamental Change if the relevant Conversion Notice is received by the Conversion Agent during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Close of Business on the Business Day immediately prior to the related Fundamental Change Purchase Date or, if such Make-Whole Fundamental Change is not also a Fundamental Change, the 35th Business Day immediately following the Effective Date for such Make-Whole Fundamental Change or (y) a Redemption Notice if the Conversion Notice is received by the Conversion Agent from, and including, the date of any Redemption Notice until the Close of Business on the second Business Day immediately preceding the related Redemption Date as provided under Article 11.

(b) *Cash Mergers*. Notwithstanding anything to the contrary herein, if the consideration paid to holders of the Common Stock in any Make-Whole Fundamental Change described in clause (2) of the definition of "Fundamental Change" is comprised entirely of cash, then, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the payment and delivery obligations upon the conversion of each $1,000 principal amount of Notes shall be calculated based solely on the Stock Price (determined in the manner described in Section 4.07(c)) for such Make-Whole Fundamental Change and shall be deemed to be an amount equal to the applicable Conversion Rate (including any adjustment as described in this Section 4.06) *multiplied by* such Stock Price. In such event, the Company's conversion obligation will be determined and paid to Holders in cash on the third Business Day following the

applicable Conversion Date. Otherwise, the Company will settle any conversion of the Notes following the Effective Date for a Make-Whole Fundamental Change in accordance with Section 4.03 hereof (but subject to Section 4.04 hereof).

(c) *Determining the Number of Additional Shares*. The number of Additional Shares, if any, by which the Conversion Rate will be increased for a Holder that converts its Notes in connection with a Make-Whole Fundamental Change shall be determined by reference to the table attached as Schedule A hereto, based on the Effective Date of the Make-Whole Fundamental Change or the date of the Redemption Notice, as applicable, and the price (the "**Stock Price**"), as determined under the two immediately following sentences. If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (2) of the definition of "Fundamental Change," the Stock Price shall be the cash amount paid per share of Common Stock. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change or the date of the Redemption Notice, as applicable.

(d) *Interpolation and Limits*. The exact Stock Price and Effective Date or the date of the Redemption Notice, as the case may be, may not be set forth in the table in Schedule A, in which case:

(i) If the Stock Price is between two Stock Prices in the table or the Effective Date or the date of the Redemption Notice, as the case may be, is between two dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later dates, as applicable, based on a 365- or 366-day year, as applicable.

(ii) If the Stock Price is greater than $17.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A hereof), no Additional Shares will be added to the Conversion Rate.

(iii) If the Stock Price is less than $4.80 per share (subject to adjustments in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A hereof), no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased on account of a Make-Whole Fundamental Change or a Redemption Notice to exceed 208.3333 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustments in the same manner as the Conversion Rate is required to be adjusted as set forth in Section 4.04 hereof.

(iv) The Stock Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate

of the Notes is otherwise required to be adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner and at the same time as the Conversion Rate is required to be adjusted as set forth in Section 4.04.

(e) *Notices*. The Company shall notify the Holders of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

Section 4.07 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale*.

(a) *Share Exchange Events.* In the case of:

(i) any recapitalization, reclassification or change of Common Stock (other than changes to par value, or from par value to no par value, and changes resulting from a subdivision or combination);

(ii) any consolidation, merger, combination or similar transaction involving the Company;

(iii) any sale, lease or other transfer to a third party of substantially all of the consolidated assets of the Company and its Subsidiaries; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, or represent solely the right to receive, stock, other securities or other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**" and any such stock, other securities or other property or assets, "**Reference Property**," and the amount of Reference Property that a holder of one share of Common Stock immediately prior to such Share Exchange Event would have been entitled to receive upon the occurrence of such Share Exchange Event, a "**Reference Property Unit**"), then the Company or the successor or purchasing company, as the case may be, shall execute with the Trustee a supplemental indenture providing that, at and after the effective time of such Share Exchange Event, the consideration due upon conversion of any Notes, and the conditions to any such conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in Article 4 were instead a reference to the same number of Reference Property Units.

If a Share Exchange Event causes the Common Stock to be converted into, or exchanged for, or represent solely the right to receive, more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property shall be deemed to be the weighted average, per share of Common Stock, of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election (or, if no holders of Common

Stock make such an election, the types and amounts of consideration actually received by holders of Common Stock), and (ii) the Reference Property Unit for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made. Notwithstanding anything to the contrary herein, if the Reference Property Unit consists entirely of cash, then the Company will be deemed to elect Cash Settlement in respect of all conversions whose Conversion Date occurs after the effective date of the Share Exchange Event described above, and the Company will pay the cash due upon such conversions no later than the third Business Day after the Conversion Date. For these purposes, the Daily VWAP or Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

Such supplemental indenture described in the second immediately preceding paragraph shall provide, to the extent the Reference Property is comprised, in whole or in part, of Common Equity, for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments provided for in this Article 4 (it being understood that no adjustment shall be required with respect to any portion of the Reference Property that does not consist of any of common stock, securities convertible into or exchangeable for common stock or rights, options, or warrants to subscribe for or purchase common stock, in each case, whether cash-settled, net-share-settled or otherwise). If the Reference Property in respect of any Share Exchange Event includes shares of stock, securities or other property or assets of a Person other than the Company or, in the case of a transaction described in Article 9, the Successor Company, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of Notes, including the right of Holders to require the Company to purchase their Notes upon a Fundamental Change pursuant to Article 3, as the Company shall reasonably consider necessary by reason of the foregoing.

(b) If the Company executes a supplemental indenture pursuant to this Section 4.07, as promptly as practicable, the Company shall file with the Trustee an Officer's Certificate briefly describing such Share Exchange Event, the composition of a Reference Property Unit for such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent to such Share Exchange Event under this Indenture have been complied with. Any failure to deliver such Officer's Certificate shall not affect the legality or validity of such supplemental indenture. The Company shall also issue a press release containing such information and shall make such press release available on its website.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 4.07. None of the foregoing provisions shall affect the right of a Holder of Notes to convert its Notes as set forth in Section 4.01 and Section 4.02 prior to the

effective date of such Share Exchange Event.

(d) The provisions of this Section 4.07 shall apply successively to successive Share Exchange Events.

Section 4.08 *Certain Covenants*.

(a) *Reservation of Shares*. To the extent necessary to satisfy its obligations under this Indenture, prior to issuing any shares of Common Stock, the Company will reserve out of its authorized but unissued shares of Common Stock or shares of Common Stock held in treasury a sufficient number of shares of Common Stock to permit the conversion of the Notes.

(b) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges (other than those created by the Holder or due to a change in registered owner) with respect to the issue thereof. The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 4.09 *Responsibility of Trustee*. The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate, to determine whether any facts exist which may require any adjustment of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any other securities or property that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Conversion Agent and as Bid Solicitation Agent.

Section 4.10 *Notice of Adjustment to the Trustee*. Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly (i) file with the Trustee and any Conversion Agent (if other than the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment; *provided* that unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect and (ii) deliver written notice to the Holders, at his or her last address appearing on the

Register provided for in Section 2.06 of this Indenture, stating that such adjustment has become effective and the Conversion Rate or conversion privilege as adjusted. Failure to deliver such notice shall not affect the legality, effectiveness or validity of any such adjustment and shall not be an Event of Default under this Indenture.

Section 4.11 *Exchange in Lieu of Conversion.*

(a) Notwithstanding any other provision of this Article 4, when a Holder surrenders a Note for conversion, and the Conversion Date for such Note occurs prior to September 15, 2023, the Company may, at its election, direct the Conversion Agent in writing to surrender, on or prior to the Scheduled Trading Day immediately preceding the first VWAP Trading Day of the applicable Observation Period (or if the Company has elected Physical Settlement, on or prior to the second Business Day immediately following the relevant Conversion Date), such Notes to a financial institution designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to pay and/or deliver, as the case may be, in exchange for such Notes, all of the cash, shares of Common Stock or a combination thereof due upon conversion, all in accordance with Section 4.02. By the Close of Business on the Scheduled Trading Day immediately preceding the first VWAP Trading Day of the applicable Observation Period (or, if the Company has elected Physical Settlement, by the Close of Business on the second Business Day immediately following the relevant Conversion Date), the Company shall notify the Holder surrendering Notes for conversion that the Company has directed the designated financial institution to make an exchange in lieu of conversion.

(b) If the designated financial institution accepts any such Notes, it will pay and/or deliver, as the case may be, the cash, shares of Common Stock or a combination thereof due upon conversion to the Conversion Agent, and the Conversion Agent shall pay and/or deliver such cash, shares of Common Stock (and cash in lieu of fractional shares) or combination thereof to such Holder on the third Business Day immediately following the last VWAP Trading Day of the applicable Observation Period (or, if the Company has elected Physical Settlement, on the third Business Day immediately following the relevant Conversion Date). Any Notes exchanged by the designated financial institution will remain outstanding subject to the Applicable Procedures. If the designated financial institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the related cash, shares of Common Stock or a combination thereof, as the case may be, or if such designated financial institution does not accept the Notes for exchange, the Company shall convert the Notes and pay and/or deliver, as the case may be, the cash, shares or Common Stock or a combination thereof due upon conversion on the third Business Day immediately following the last VWAP Trading Day of the applicable Observation Period (or, if the Company has elected Physical Settlement, on the third Business Day immediately following the relevant Conversion Date) as set forth in Section 4.02. The Company's designation of a financial institution to which the Notes may be submitted for exchange does not require the financial institution to accept any Notes (unless the financial institution has separately made an agreement with the Company to do so). The Company may, but will not be obligated to, enter into a separate

agreement with any designated financial institution that would compensate it for any such transaction.

ARTICLE 5.
COVENANTS

Section 5.01 *Payment of Principal, Interest and Fundamental Change Purchase Price.*

The Company covenants and agrees that it will cause to be paid the principal of (including the Fundamental Change Purchase Price and Redemption Price, as applicable) and accrued and unpaid interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 5.02 *Maintenance of Office or Agency*.

The Company will maintain in the continental United States an office of the Paying Agent, an office of the Registrar and an office or agency where Notes may be surrendered for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee; *provided that*, the Corporate Trust Office shall not be an office or agency of the Company for service of legal process against the Company.

The Company may also from time to time designate as co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Conversion Agent" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Registrar, Custodian, Conversion Agent and Bid Solicitation Agent, and its Corporate Trust Office, which shall be in the continental United States, shall be considered as one such office or agency of the Company for each of the aforesaid purposes. The Company may, however, change the Paying Agent or Registrar without notice to the Holders. The Company or its Affiliates may act as Paying Agent or Registrar.

With respect to any Global Note, the Corporate Trust Office of the Trustee or any Paying Agent shall be the place of payment where such Global Note may be presented or surrendered for payment or conversion or for registration of transfer or exchange, or where successor Notes may be delivered in exchange therefor; *provided*, *however*, that any such payment, conversion, presentation, surrender or delivery effected pursuant to the Applicable Procedures for such

Global Note shall be deemed to have been effected at the place of payment for such Global Note in accordance with the provisions of this Indenture.

Section 5.03 *Provisions as to Paying Agent*.

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.03:

(i) that it will hold all sums held by it as such agent for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, or any Fundamental Change Purchase Price or Redemption Price for, the Notes held in trust for the benefit of the Trustee and the holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal of, any premium on, accrued and unpaid interest, if any, on, or any Fundamental Change Purchase Price or Redemption Price for, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, or any Fundamental Change Purchase Price or Redemption Price for, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal, premium, accrued and unpaid interest, or any Fundamental Change Purchase Price or Redemption Price, as the case may be, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action, provided that, if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, or any Fundamental Change Purchase Price or Redemption Price for, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such amount so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any such payment when the same shall become due and payable.

(c) Anything in this Section 5.03 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 5.03, such sums to be held by the Trustee upon the trusts herein contained and

upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, or any Fundamental Change Purchase Price or Redemption Price for, any Note and remaining unclaimed for two years after such principal, premium, accrued and unpaid interest, or any Fundamental Change Purchase Price or Redemption Price has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that before the Trustee or such Paying Agent are required to make any such repayment, the Company shall cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 calendar days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 5.04 *Reports*.

(a) The Company will file with the Trustee, within 15 calendar days after it is required to file the same with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), copies of the quarterly and annual reports and of the information, documents and other reports, if any, that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. Any such report, information or document that the Company files with the Commission through the EDGAR system (or any successor thereto) will be deemed to be delivered to the Trustee for the purposes of this Section 5.04 at the time of such filing through the EDGAR system (or such successor thereto); *provided, however*, that the Trustee shall have no responsibility to determine whether such filings have been made.

(b) Delivery of any such reports, information and documents to the Trustee shall be for informational purposes only, and the Trustee's receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(c) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will, so long as any of the Notes or the shares of Common Stock delivered upon conversion of the Notes will, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder, beneficial

owner or prospective purchaser of such Notes or such shares of Common Stock the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or such shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company will take such further action as any Holder or beneficial owner of such Notes or such shares of Common Stock may reasonably request from time to time to enable such Holder or beneficial owner to sell such Notes or such shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

Section 5.05 *Statements as to Defaults*. The Company is required to deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate, stating whether or not to the knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided under this Indenture) and, if the Company is in default, specifying all such Default or Event of Defaults and the nature and the status thereof of which he or she may have knowledge. In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 calendar days after the Company becomes aware of the occurrence of any Default or Event of Default, an Officer's Certificate setting forth the details of such Default or Event of Default, its status and the action that the Company proposes to take with respect thereto; provided that no such Officer's Certificate shall be required to the extent that the event that would constitute a Default or Event of Default has been cured or waived prior to the date on which such Officer's Certificate is due. Such Officer's Certificate shall also comply with any additional requirements set forth in Section 5.07 hereof. The Trustee shall not be deemed to have notice of any default or event of default unless a Responsible Officer of the Trustee has actual knowledge thereof.

Section 5.06 *Additional Interest Notice*. If Additional Interest is payable by the Company pursuant to Section 5.08 hereof or Section 6.03 hereof, the Company shall deliver to the Trustee an Officer's Certificate, prior to the Regular Record Date for each applicable Interest Payment Date, to that effect stating (a) the amount of such Additional Interest that is payable and (b) the date on which such interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 5.07 *Compliance Certificate and Opinions of Counsel*.

(a) Except as otherwise expressly provided in this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture

relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(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 each such individual, he has made such examination or investigation as is necessary to enable him 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, in the opinion of each such individual, such condition or covenant has been complied with.

(c) All applications, requests, certificates, statements or other instruments given under this Indenture shall be without personal recourse to any individual giving the same and may include an express statement to such effect.

Section 5.08 *Additional Interest*.

(a) If, at any time during the six-month period beginning on, and including, the date which is six months after the Last Original Issuance Date, the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (other than current reports on Form 8-K), or the Notes are not otherwise Freely Tradable, including pursuant to Rule 144 under the Securities Act, by Holders other than "affiliates" (within the meaning of Rule 144) of the Company or Holders that were "affiliates" (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) the Company shall pay Additional Interest that will accrue on the Notes at the rate of 0.50% per annum of the principal amount of Notes then Outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or for which the restrictions on transfer are applicable; *provided* that such period shall end on the date that is one year from the Last Original Issuance Date.

(b) If, and for so long as, the Restricted Notes Legend has not been removed (or deemed removed) from the Notes, the Notes are not assigned (or deemed assigned) an unrestricted CUSIP number or the Notes are not otherwise Freely Tradable by Holders other than "affiliates" (within the meaning of Rule 144) of the Company or Holders that were "affiliates" (within the meaning of Rule 144) of the Company during the 90 days

immediately preceding the date of the proposed transfer (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 375th day after the Last Original Issuance Date, the Company will pay Additional Interest on the Notes. Additional Interest will accrue on the Notes at the rate of 0.50% per annum of the principal amount of Notes then outstanding until such Restricted Notes Legend is removed (or deemed removed), the Notes are assigned (or deemed assigned) an unrestricted CUSIP number and the Notes are Freely Tradable.

(c) Such Additional Interest that is payable shall be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes and, subject to 5.08(d), will be in addition to any Additional Interest that may accrue as described under Section 6.03.

(d) Notwithstanding anything to the contrary herein, in no event will any Additional Interest that may accrue as a result of the Company's failure to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), as described in this Section 5.08, together with any interest that may accrue as described in Section 6.03, accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 5.09 *Corporate Existence*. Subject to Article 9, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 5.10 *Restriction on Resales*. The Company shall not, and shall not permit any Affiliate of the Company to, resell any of the Notes that have been reacquired by the Company or any of such Affiliate.

Section 5.11 *Company to Furnish Trustee Names and Addresses of Holders*. The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If at any time the Trustee is not the Registrar, the Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not later than the 15th day after each Regular Record Date, a list, in such form as the Trustee may reasonably require, containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, of the names and addresses of the Holders, as of such preceding Regular Record Date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished.

ARTICLE 6.
REMEDIES

Section 6.01 *Events of Default*. Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 calendar days;

(b) default in the payment of the principal of or premium, if any, on any Note (including the Fundamental Change Purchase Price or Redemption Price, if applicable) when due and payable on the Maturity Date, upon required repurchase, upon optional redemption, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligations under Article 4 hereof to convert the Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, upon exercise of a Holder's conversion right and such failure continues for a period of five Business Days;

(d) failure by the Company to comply with its obligations under Article 9 hereof;

(e) failure by the Company to issue a notice in accordance with the provisions of Section 3.01 hereof or Section 4.01(b)(iv) hereof and such failure continues for a period of five Business Days;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then Outstanding (a copy of which notice, if given by Holders, must also be given to the Trustee) has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 6.01 specifically provided for or that is not applicable to the Notes), which notice shall state that it is a "**Notice of Default**" hereunder;

(g) default by the Company or any of its Significant Subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced any indebtedness for money borrowed in excess of $15,000,000 (or its foreign currency equivalent at the time) in the aggregate of the Company and/or any of the Significant Subsidiaries of the Company, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such indebtedness when due and payable at its stated maturity, upon redemption, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 calendar days;

(h) a final judgment for the payment of $15,000,000 (or its foreign currency equivalent at the time) or more (excluding any amounts covered by insurance or bond)

rendered against the Company or any of its Significant Subsidiaries by a court of competent jurisdiction, which judgment is not discharged, stayed, vacated, paid or otherwise satisfied within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished; or

(i) the Company or any Significant Subsidiary of the Company shall commence a voluntary case or other proceeding seeking the liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of the Company's or such Significant Subsidiary of the Company's property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary of the Company seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary of the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty consecutive days.

Section 6.02 *Acceleration; Waiver*.

(a) If an Event of Default (other than an Event of Default specified in Section 6.01(i) hereof or Section 6.01(j) hereof with respect to the Company) occurs and is continuing, and is known to the Trustee, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the Notes then Outstanding by written notice to the Company and the Trustee, may declare 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes then Outstanding to be due and payable immediately. Upon such a declaration, such principal, premium, if any, and accrued and unpaid interest, if any, shall be due and payable immediately. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all Notes shall automatically become due and payable.

(b) The Holders of a majority in aggregate principal amount of Notes at the time outstanding, by written notice to the Trustee and the Company, may waive any current Default or Event of Default (except with respect to (i) any failure by the Company to pay the principal of or accrued interest on the Notes (including the Fundamental Change Purchase Price, if applicable), (ii) any failure by the Company to

comply with its obligations to purchase Notes when required to do so under Article 3, (iii) any failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iv) any covenant or provision of this Indenture or the Notes that cannot be modified or amended without the consent of all Holders as provided for in Section 8.02) and may rescind any acceleration of the notes if (x) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (y) all existing Events of Default, other than the nonpayment of the principal of and interest on the Notes have become due solely by such acceleration, have been cured or waived.

Section 6.03 *Additional Interest*.

(a) Notwithstanding Section 6.02 hereof, to the extent the Company elects, the sole remedy for an Event of Default under Section 6.01(f) relating to the Company's failure to comply with Section 5.04(a) hereof (such Event of Default, a "**Reporting Event of Default**"), will (i) for the first 90 days after the occurrence of such Reporting Event of Default (beginning on, and including, the date on which such Reporting Event of Default first occurs) consist exclusively of the right to receive Additional Interest on the Notes equal to 0.25% per annum of the principal amount of such Notes then Outstanding for each day during such 90-day period on which such Event of Default is continuing and (ii) for the period from, and including, the 91st day after the occurrence of such Reporting Event of Default to, and including the 180th day after the occurrence of such Reporting Event of Default, consist exclusively of the right to receive Additional Interest on the Notes equal to 0.50% per annum of the principal amount of the Notes Outstanding for each day during such additional 90-day period on which such Reporting Event of Default is continuing (subject to 6.03(d), in addition to any Additional Interest that may accrue as described under Section 5.08).

(b) On the 181st day after the date on which the Reporting Event of Default occurred (if such Reporting Event of Default has not been cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02 hereof.

(c) In order to elect to pay the Additional Interest as the sole remedy during the first 180 days after the occurrence of a Reporting Event of Default, the Company must notify all Holders of Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the Company's failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02 hereof. In the event the Company does not elect to pay Additional Interest following a Reporting Event of Default or the Company elects to pay Additional Interest but does not pay the Additional Interest when due, the Notes will be subject to acceleration as provided in Section 6.02 hereof. Except as provided in the Section 6.03(d) below, nothing in this Section 6.03 shall affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. For the avoidance of doubt, nothing in this Indenture shall be construed to require the Company to make such an election.

(d) Such Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes and will be in addition to any Additional Interest that may accrue pursuant to Section 5.08.

(e) With regard to any Reporting Event of Default, no Additional Interest shall accrue, and no right to declare the principal or other amounts due and payable in respect of the Notes with respect to such Reporting Event of Default shall exist, after such Reporting Event of Default has been cured.

(f) In no event shall Additional Interest, if any, payable at the Company's election with regard to a Reporting Event of Default, together with any interest that may accrue as a result of the Company failing to comply with its obligations pursuant to Section 5.08 accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 6.04 *Control by Majority*. At any time, the Holders of a majority of the aggregate principal amount of the then Outstanding Notes may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to the Trustee's duties under Article 12 hereof, that the Trustee determines to be unduly prejudicial to the rights of a Holder or to the Trustee, or that would potentially involve the Trustee in personal liability unless the Trustee is offered indemnity or security satisfactory to it against any loss, liability or expense to the Trustee that may result from the Trustee's instituting such proceeding as the Trustee. Prior to taking any action hereunder, the Trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

Section 6.05 *Limitation on Suits*. Subject to Section 6.06 hereof, no Holder may pursue a remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously delivered to the Trustee written notice that an Event of Default has occurred and is continuing;

(b) the Holders of at least 25% of the aggregate principal amount of the then Outstanding Notes deliver to the Trustee a written request that the Trustee pursue a remedy with respect to such Event of Default;

(c) such Holder or Holders have offered and, if requested, provided to the Trustee indemnity satisfactory to the Trustee against any loss, liability or other expense of compliance with such written request;

(d) the Trustee has not complied with such written request within 60 days after receipt of such written request and offer of indemnity or security; and

(e) during such 60-day period, the Holders of a majority of the aggregate principal amount of the then Outstanding Notes did not deliver to the Trustee a direction inconsistent with such written request.

Section 6.06 *Rights of Holders to Bring Suit*. Notwithstanding anything to the contrary elsewhere in this Indenture, the right of any Holder to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or premium, if any, interest on, Fundamental Change Purchase Price or

Redemption Price, as applicable, with respect to, on or after the respective due date, and to convert its Notes and to bring suit for the enforcement of the payment or delivery of cash, shares of Common Stock or combination of cash and shares of Common Stock, if any, as the case may be, due with respect to such Notes in accordance with Article 4 hereof, will not be impaired or affected without the consent of such Holder and will not be subject to the requirements of Section 6.05 hereof.

Section 6.07 *Collection of Indebtedness; Suit for Enforcement by Trustee*. If an Event of Default specified in Section 6.01(a), 6.01(b) or 6.01(c) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium on, interest on, Fundamental Change Purchase Price or Redemption Price for, and the amount of cash, the number of shares of Common Stock or the combination of cash and shares of Common Stock, if any, as the case may be, due upon the conversion of, the Notes, as the case may be, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as well as any other amounts that may be due under Section 10.07 hereof.

Section 6.08 *Trustee May Enforce Claims Without Possession of Notes*. All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.09 *Trustee May File Proofs of Claim*. The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company, its creditors or its property and, unless prohibited by law or applicable regulations, will be entitled to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 10.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 10.07 hereof out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a lien on, and is paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to, or to accept or to

adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.11 *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.09 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.12 *Delay or Omission Not a Waiver*. No delay or omission of the Trustee or of any Holder 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 6 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 (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

Section 6.13 *Priorities.* If the Trustee collects any money or property pursuant to this Article 6, it will pay out the money or property in the following order:

FIRST: to the Trustee, its agents and attorneys for amounts due under Section 10.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

SECOND: to the Holders, for any amounts due and unpaid on the principal of, premium on, accrued and unpaid interest on, Fundamental Change Purchase Price or Redemption Price for, and any cash due upon conversion of, any Note, without preference or priority of any kind, according to such amounts due and payable on all of the Notes; and

THIRD: the balance, if any, to the Company or to such other party as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.13. If the Trustee so fixes a record date and a payment date, at least 15 calendar days prior to such record date, the Trustee will deliver to each Holder a written notice, which notice will state such record date, such payment date and the amount of such payment.

Section 6.14 *Undertaking for Costs*. All parties to this Indenture agree, and each Holder, by such Holder's acceptance of a Note, shall be deemed to have agreed, that any court may in its discretion require, 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, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided*, *however*, that the provisions of this Section 6.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Notes then Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, Fundamental Change Purchase Price or Redemption Price for, any Note on or after the due date expressed or provided for in this Indenture or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 4 hereof.

Section 6.15 *Waiver of Stay, Extension and Usury Laws*. The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company, to the extent that it may lawfully do so, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will instead suffer and permit the execution of every such power as though no such law has been enacted.

ARTICLE 7.
SATISFACTION AND DISCHARGE

Section 7.01 *Discharge of Liability on Notes*. When (a) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether on the Maturity Date, on any Fundamental Change Purchase Date, any Redemption Date, upon conversion or otherwise) and the Company shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, an amount of cash, a number of shares of Common Stock, or a combination of cash and shares of Common Stock, if any, as the case may be (solely to settle amounts due with respect to outstanding conversions), sufficient to pay all amounts due on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied, except in the event the Notes are due and payable solely in cash at the Maturity Date or upon an earlier Fundamental Change Purchase Date or Redemption Date, by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable

hereunder by the Company, then this Indenture shall cease to be of further effect (except as to the rights of the Trustee under Section 10.07 and if any funds are deposited under clause (b) above, as to (i) rights hereunder of Holders to receive from such trust all amounts owing upon the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (ii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee, including the fees and expenses of its counsel, and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 7.02 *Deposited Monies to Be Held in Trust by Trustee*. Subject to Section 7.04 hereof, all monies and shares of Common Stock, as the case may be, deposited with the Trustee pursuant to Section 7.01 hereof shall be held in trust for the sole benefit of the Holders of the Notes, and such monies and shares of Common Stock shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment or settlement of which such monies or shares of Common Stock, or both, as the case may be, have been deposited with the Trustee, of all sums or amounts due and to become due thereon for principal and interest, if any.

Section 7.03 *Paying Agent to Repay Monies Held*. Upon the satisfaction and discharge of this Indenture, all monies and shares of Common Stock, as the case may be, then held by any Paying Agent (if other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies and shares of Common Stock, or both, as the case may be.

Section 7.04 *Return of Unclaimed Monies*. Subject to the requirements of applicable law, any monies and shares of Common Stock deposited with or paid to the Trustee for payment of the principal of or interest, if any, on the Notes and not applied but remaining unclaimed by the Holders of the Notes for two (2) years after the date upon which the principal of or interest, if any, on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand, and all liability of the Trustee shall thereupon cease with respect to such monies and shares of Common Stock; and the Holder shall thereafter look only to the Company for any payment or delivery that such Holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 7.05 *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money or shares of Common Stock, or both, as the case may be, in accordance with Section 7.02 hereof by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under the Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 hereof until such time as the Trustee or the Paying Agent is permitted to apply all such money and shares of Common Stock in accordance with Section 7.02 hereof; *provided*, *however*, that if the Company makes any payment of interest on, principal of or payment or delivery in respect of any Note following the reinstatement of its obligations, the Company shall be subrogated to the

rights of the Holders of such Notes to receive such payment from the money or shares of Common Stock, if any, held by the Trustee or Paying Agent.

ARTICLE 8.
SUPPLEMENTAL INDENTURES

Section 8.01 *Supplemental Indentures Without Consent of Holders*.

Without the consent of any Holder, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture or the Notes;

(b) to conform the terms of this Indenture or the Notes to the description thereof in the Preliminary Offering Circular, as supplemented by the pricing term sheet related to the offering of the Notes as such provision is set forth in an Officer's Certificate;

(c) to evidence the succession by a Successor Company and to provide for the assumption by a Successor Company of the Company's obligations under the Indenture;

(d) to add guarantees with respect to the Notes;

(e) to secure the Notes;

(f) to add to the Company's covenants further covenants, restrictions or conditions for the benefit of the Holders or surrender any right or power conferred upon the Company by the Indenture;

(g) to make any other change that does not adversely affect the rights of any Holder (other than any Holder that consents to such change);

(h) to provide for a successor Trustee;

(i) upon the occurrence of a Share Exchange Event, (x) to provide that the Notes are convertible into Reference Property, as required under Section 4.07, and (y) to effect the related changes to the terms of the Notes required under Section 4.07, in each case, to the extent expressly required and in accordance with the applicable provisions hereof;

(j) to comply with the Applicable Procedures;

(k) to conform this Indenture or the Notes to the requirements of the Trust Indenture Act as then in effect;

(l) to irrevocably elect a Settlement Method or eliminate, in the aggregate, any one or two Settlement Methods or, in the case of Combination Settlement, irrevocably elect a Specified Dollar Amount; or

(m) increase the Conversion Rate, as provided in Article 4.

Section 8.02 *Supplemental Indentures With Consent of Holders*.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender or exchange offer for, Notes) (i) the Company, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture and (ii) any past Default or compliance with any covenants or provisions of this Indenture may be waived (other than a Default or an Event of Default resulting from the failure to pay principal or interest on the Notes, the Fundamental Change Purchase Price, to pay or deliver, as the case may be, the amount of cash, the number of shares of Common Stock or combination of cash and shares of Common Stock, if any, as the case may be, due upon conversion of a Note); *provided*, *however*, that no such supplemental indenture or waiver shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) reduce the percentage in aggregate principal amount of Notes then Outstanding necessary to waive any past Default or Event of Default;

(b) reduce the rate of interest on any Note or change the time for payment of interest on any Note;

(c) reduce the principal of or premium, if any, on any Note or change the Maturity Date of any Note;

(d) change the place or currency of payment on any Note;

(e) make any change that impairs or adversely affects the conversion rights of any Notes;

(f) reduce the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the rights of the Holders of the Notes the Company's obligation to pay the Fundamental Change Purchase Price, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(g) impair the right of any Holder of Notes to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or premium, if any, and interest on, Fundamental Change Purchase Price or Redemption Price, as applicable, with respect to, and the amount of cash, number of shares of Common Stock or combination of cash and shares of Common Stock, as the case may be, due upon conversion of, such Note on or after the respective due dates therefor;

(h) modify the ranking provisions of this Indenture in a manner that is adverse to the rights of the Holders of the Notes;

(i) modify the provisions of Article 11 in a manner adverse to Holders of the Notes in any material respect;

(j) make any change to the provisions of this Article 8 that requires each Holder's consent or in the waiver provisions of this Indenture if such change is adverse to the rights of Holders of the Notes.

It shall not be necessary for any Act or consent of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act or consent shall approve the substance thereof. The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to consent to any indenture supplemental hereto. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to consent to such supplemental indenture, whether or not such Holders remain Holders after such record date; *provided* that, unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 calendar days after such record date, any such consent previously given shall automatically and without further action by any Holder be cancelled and of no further effect.

Section 8.03 *Notice of Amendment or Supplement*. After an amendment or supplement under this Article 8 becomes effective, the Company shall provide to the Holders a written notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

Section 8.04 *Trustee to Sign Amendments, Etc.* The Trustee shall sign any amendment or supplement authorized pursuant to this Article 8 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall receive, and, shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel provided at the expense of the Company providing that such amendment or supplement is authorized or permitted by the Indenture and that such amendment or supplement is the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE 9.
SUCCESSOR COMPANY

Section 9.01 *Company May Consolidate, Etc. on Certain Terms*. The Company shall not amalgamate or consolidate with, merge with or into or convey, transfer or lease its properties and assets substantially as an entirety to another Person (excluding, for the avoidance of doubt, any conveyance, transfer or lease to one of the Company's wholly-owned Subsidiaries), unless:

(a) the resulting, surviving transferee or successor Person (the "**Successor Company**") is (and, if the Company remains a party to this Indenture, the Company is) a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) expressly assumes, by a supplemental indenture, executed and delivered to the Trustee, all of the obligations of the Company under the Notes and this Indenture as applicable to the Notes;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture with respect to the Notes; and

(c) all the conditions specified in this Article 9 are met.

Upon any such amalgamation, consolidation, merger, conveyance, transfer or lease, the Successor Company (if not the Company) shall succeed to, and may exercise every right and power of the Company under this Indenture, and the Company shall be discharged from its obligations under the Notes and the Indenture except in the case of any such lease.

For purposes of this Section 9.01, the conveyance, transfer or lease of the properties and assets of one or more Subsidiaries of the Company substantially as an entirety to another Person (other than the Company or one or more of its wholly-owned Subsidiaries), which properties and assets, if held by the Company instead of such Subsidiary or Subsidiaries, would constitute the properties and assets of the Company substantially as an entirety on a consolidated basis, shall be deemed to be the transfer of the properties and assets of the Company substantially as an entirety to another Person.

Section 9.02 *Successor Corporation to Be Substituted*. In case of any such amalgamation, consolidation, merger, conveyance, transfer or lease and upon the assumption by the Successor Company (if other than the Company), by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium (including any Fundamental Change Purchase Price and any Redemption Price), if any, accrued and unpaid interest, if any, on all of the Notes, the due and punctual delivery or payment, as the case may be, of any Settlement Amount due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company under this Indenture, such Successor Company shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Indenture, with the same effect as if it had been named herein as the party of the first part; *provided, however*, that in the case of a conveyance, transfer or lease to one or more of its Subsidiaries of all or substantially all of the properties and assets of the Company, the Notes will remain convertible based on the Common Stock and into cash, shares of Common Stock, or a combination of cash and shares of Common Stock, if any, as the case may be, in accordance with Section 4.03 hereof, but subject to adjustment (if any) in accordance with Section 4.07 hereof. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms,

conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor

Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such amalgamation, consolidation, merger, conveyance or transfer (but not in the case of a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 9 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such amalgamation, consolidation, merger, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 9.03 *Opinion of Counsel to Be Given to Trustee*. In the case of any amalgamation, merger, consolidation, conveyance, transfer or lease under this Article 9 the Trustee shall receive an Officer's Certificate and an Opinion of Counsel stating that any such amalgamation, consolidation, merger, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Indenture.

ARTICLE 10.
THE TRUSTEE

Section 10.01 *Duties and Responsibilities of Trustee*.

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default has occurred (which has not been cured or waived) and the Trustee has notice of such fact, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in their exercise, as a prudent person would use in the conduct of his or her own affairs.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(A) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and applicable law, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(B) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding determined as provided in Section 1.03 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(iv) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 10.01;

(v) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Registrar with respect to the Notes; and

(vi) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 10.02 *Notice of Defaults*. The Trustee shall give the Holders notice of any Default of which a Responsible Officer of the Trustee has knowledge or is deemed to have notice under Section 10.03(a) within 90 days after the occurrence thereof becomes known so long as such Default is continuing; *provided*, that (except in the case of any Default in the payment of principal amount of, or interest on, any of the Notes or Fundamental Change Purchase

Price or Redemption Price or a default in the delivery of the consideration due upon conversion), the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interest of the Holders of Notes.

Section 10.03 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 10.01:

(a) the Trustee may conclusively rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution;

(c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture (including upon the occurrence and during the continuance of an Event of Default), unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against any loss, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney (at the reasonable expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation);

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee

shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) in no event shall the Trustee be responsible or liable for special, indirect, consequential or punitive loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and the Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(k) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder; and

(l) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

Section 10.04 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 10.05 *Trustee, Paying Agents, Exchange Agents or Registrar May Own Notes*. The Trustee, any Paying Agent, any Conversion Agent or Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Registrar.

Section 10.06 *Monies to be Held in Trust*. Subject to the provisions of Section 10.07, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 10.07 *Compensation and Expenses of Trustee*. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the

compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable, out-of-pocket expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or willful misconduct.

The Company also covenants to indemnify the Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and its agents and any Authenticating Agent for, and to hold them harmless against, any and all loss, liability, claim or expense incurred without negligence or willful misconduct on the part of the Trustee or such officers, directors, employees and agent or Authenticating Agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by the Company, a Holder or any other Person) of liability in the premises. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Company under this Section 10.07 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Company under this Section 10.07 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee hereunder.

When the Trustee and its agents and any Authenticating Agent incur expenses or render services after an Event of Default specified in Section 6.01(i) and 6.01(j) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 10.08 *Officer's Certificate as Evidence*. Except as otherwise provided in Section 10.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee.

Section 10.09 *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 10.09 the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 10.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 10.

Section 10.10 *Resignation or Removal of Trustee*.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the Holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment thirty (30) days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, upon ten (10) Business Days' notice to the Company and the Holders, petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 6.14, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 10.09 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided, however*, that if no successor Trustee shall have been appointed and have accepted appointment

thirty (30) days after either the Company or the Holders has removed the Trustee, the Trustee so removed may petition at the Company's expense any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time Outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten (10) days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, or if such Trustee so removed or any Holder fails to act, the Company, upon the terms and conditions and otherwise as provided in Section 10.10(a), may petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 10.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 10.11.

Section 10.11 *Acceptance by Successor Trustee*. Any successor trustee appointed as provided in Section 10.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 10.07, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 10.07.

No successor trustee shall accept appointment as provided in this Section 10.11 unless, at the time of such acceptance, such successor trustee shall be eligible under the provisions of Section 10.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 10.11, the Company (or the former trustee, at the written direction of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder delivered to the Holders of Notes at their addresses as they shall appear on the Register. If the Company fails to mail or deliver such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed or delivered at the expense of the Company.

Section 10.12 *Succession by Merger, Etc*. Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be eligible under the provisions of Section 10.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or Authenticating Agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any Authenticating Agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, exchange or consolidation.

Section 10.13 *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company is deemed to receive such application pursuant to Section 12.08, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 11.
OPTIONAL REDEMPTION

Section 11.01 *Right to Redeem.* The Company shall not redeem the Notes prior to December 19, 2020, and no sinking fund is provided for the Notes.

(a) On or after December 19, 2020, the Company may from time to time redeem any or all of the Notes in cash at the applicable Redemption Price if the Last Reported Sale Price per share of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on

the Trading Day immediately preceding the date of the Redemption Notice exceeds 130% of the applicable Conversion Price for the Notes on each applicable Trading Day.

(b) The Company may elect to redeem any or all of the Notes pursuant to this Section 11.01 by providing a Redemption Notice pursuant to Section 11.03, not more than 75 Scheduled Trading Days but not less than 65 Scheduled Trading Days prior to the redemption date proposed by the Company, (the "Redemption Date"); *provided, however*, that 5 Business Days prior to delivery of any Redemption Notice (or such shorter period agreed to by the Trustee) to the Holders, the Company will deliver an Officer's Certificate to the Trustee (upon which the Trustee may

conclusively rely) certifying that the Company is entitled to redeem the Notes in accordance with this Section 11.01. Substantially concurrently with providing such Redemption Notice, the Company shall issue a press release and publish such information on the Company's website.

Section 11.02 *Redemption Price*. The "**Redemption Price**" for the Notes to be redeemed on any Redemption Date shall be calculated by the Company and be an amount equal to (i) 100% of the principal amount of the Notes being redeemed; *plus* (ii) any accrued and unpaid interest to, but excluding, the Redemption Date. If the Redemption Date falls after a Regular Record Date for the payment of interest and on or prior to the corresponding Interest Payment Date, the Company shall not pay accrued and unpaid interest to the Holder of Notes being redeemed, and will instead pay the full amount of accrued and unpaid interest, if any, payable on such Interest Payment Date to the Holder of record as of the Close of Business on such Regular Record Date and the Redemption Price shall be an amount equal to 100% of the principal amount of the Notes being redeemed.

Section 11.03 *Redemption Notice*. Notice of redemption (a "**Redemption Notice**") shall be given in accordance with Section 12.08, to each Holder of Notes (with a copy to the Trustee).

(a) The Redemption Notice shall state:

(i) the Redemption Date (which must be a Business Day);

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each such Note, and that interest thereon, if any, shall cease to accrue on and after said date;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders have a right to convert the Notes called for redemption upon satisfaction of the requirements set forth in this Indenture;

(vi) the Settlement Method and Observation Period which will apply to all conversions after the Company issues such Redemption Notice and on or

prior to the second Business Day immediately preceding the Redemption Date (the "**Redemption Period**");

(vii) the time at which the Holders' right to convert the Notes called for redemption will expire, which will be the Close of Business on the second Business Day immediately preceding the Redemption Date;

(viii) the procedures a converting Holder must follow to convert its Notes;

(ix) the Conversion Rate and, if applicable, the number of Additional Shares under Section 4.06(a); and

(x) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes.

(b) A Redemption Notice shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company; *provided* that the Company shall have delivered to the Trustee, at least five (5) Business Days before the Redemption Notice is required to be given (or such shorter period agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and attaching the form of Redemption Notice and including the information to be stated in such notice.

(c) A Redemption Notice, if given in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not a Holder receives such notice. In any case, a failure to give such Redemption Notice or any defect in the Redemption Notice to the Holder of any Notes shall not affect the validity of the proceedings for the redemption of any other Notes.

(d) A Redemption Notice shall be irrevocable.

Section 11.04 *Payment of Notes Called for Redemption*.

(a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 11.03, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price. Any Notes redeemed by the Company shall be paid in cash.

(b) Prior to 11:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 10.06, an amount of cash (in immediately available funds if deposited on the Redemption Date) sufficient to pay the Redemption Price for all of the Notes to be redeemed on such Redemption Date. Subject to the Paying Agent holding money sufficient to pay the Redemption Price for all

of the Notes to be redeemed on such Redemption Date, upon surrender of any Note for redemption in accordance with the Redemption Notice, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes.

(c) Any cash amounts due upon redemption in respect of the Notes presented for redemption shall be paid by the Company to such Holder, or such Holder's nominee or nominees. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 11.05 *Redemption in Part.*

(a) If less than all of the Outstanding Notes are to be redeemed, the Trustee will select the Notes to be redeemed in principal amounts of $1,000 or integral multiples of $1,000 in excess thereof, by lot, on a *pro rata* basis, or by another method the Trustee considers fair and appropriate, subject, in each case, to compliance with the Applicable Procedures of the Depositary. If a portion of the Notes is selected for partial redemption and the Holder of such Notes converts a portion of its Notes, the converted portion shall be deemed to be from the portion selected for redemption, except to the extent of the excess, if any, of such converted portion over such portion selected for redemption.

(b) In the event of any redemption in part, the Company, the Trustee and the Registrar shall not be required to (i) issue, register the transfer of or exchange any Notes during a period beginning at the Open of Business 15 calendar days before any selection of the Notes and ending at the Close of Business on the earliest date on which the relevant Redemption Notice is deemed to have been given to all Holders of Notes to be redeemed or (ii) register the transfer of or exchange any Notes so selected for redemption, in whole or in part, except the unredeemed portion of any Notes being redeemed in part.

Section 11.06 *Restrictions on Redemption*. The Company may not redeem the Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the applicable Redemption Price with respect to such Notes).

ARTICLE 12.
MISCELLANEOUS

Section 12.01 *Effect on Successors and Assigns*. All agreements of the Company, the Trustee, the Registrar, the Paying Agent, the Bid Solicitation Agent and the Conversion Agent in this Indenture and the Notes will bind their respective successors.

Section 12.02 *Governing Law*. This Indenture and the Notes, and any claim, controversy or dispute arising under or related to the Indenture or the Notes, will be governed by, and construed in accordance with, the laws of the State of New York. To the fullest extent permitted by applicable law, the Company hereby irrevocably submits to the jurisdiction of any Federal or

State court located in the Borough of Manhattan in The City of New York, New York in any suit, action or proceeding based on or arising out of or relating to this Indenture or any Notes and irrevocably agrees that all claims in respect of such suit or proceeding may be determined in any such court. The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may have to the laying of the venue of any such suit, action or proceeding brought in an inconvenient forum. The Company agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon the Company, and may be enforced in any courts to the jurisdiction of which the Company is subject by a suit upon such judgment, provided, that service of process is effected upon the Company in the manner specified herein or as otherwise permitted by law.

Section 12.03 *No Note Interest Created*. Except as may be provided in Sections 6.09 and 10.07 hereof, nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 12.04 *Voting.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any of its Subsidiaries or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any of its Subsidiaries shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that in determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice, consent or waiver or other action that is to be made by a requisite principal amount of Outstanding Notes, only such Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for such purposes if the pledgee shall establish its right to so act with respect to such Notes and that the pledgee is not the Company, one of its Subsidiaries or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or one of its Subsidiaries.

Section 12.05 *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, will give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any Authenticating Agent, any Registrar or their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 12.06 *Calculations*. Except as otherwise provided in this Indenture, the Company shall be responsible for making all calculations called for under the Indenture and the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices, Trading Prices and Daily VWAPs of the Common Stock, accrued interest payable on the Notes, any Additional Interest payable, any Redemption Price for the Notes and the Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Bid Solicitation Agent and the Conversion Agent, and each of the Trustee, the Bid Solicitation Agent and the Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification.

The Trustee shall forward the Company's calculations to any Holders upon the written request of that Holder.

Whenever the Company is required to calculate or make adjustments to the Conversion Rate, the Company will do so to the nearest 1/10,000th of a share of Common Stock, rounding any additional decimal places up or down in a commercially reasonable manner.

Section 12.07 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.08 *Notices, Etc. to Trustee and Company*.

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(i) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (including facsimile or electronically in PDF format) to or with the Trustee at its Corporate Trust Office; or

(ii) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid (and, in the case of securities held in book-entry form, by electronic transmission), to the Company addressed to it at the address of its principal office at 1020 East Meadow Circle, Palo Alto, CA 94303-4230, Attn: General Counsel or at any other address furnished in writing to the Trustee by the Company prior to such mailing or electronically in PDF format.

(b) The Company or the Trustee, by notice given to the other in the manner provided in this Section 12.08, may designate additional or different addresses for subsequent notices or communications.

(c) Whenever the Company is required to deliver notice to the Holders, the Company will, by the date it is required to deliver such notice to the Holders, deliver a copy of such notice to the Trustee and, if different, the Paying Agent, the Registrar and the Conversion Agent. Each notice to the Trustee, the Paying Agent, the Registrar and the Conversion Agent shall be sufficiently given if in writing and mailed, first-class postage prepaid to the address most recently sent by the Trustee, the Paying Agent, the Registrar or the Conversion Agent, as the case may be, to the Company or in such other format or formats as the Trustee and, if different, the Paying Agent, the Registrar and the Conversion Agent may accept at such time.

(d) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by the Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(e) Where this Indenture provides for notice of any event to a Holder of a Global Note, such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to its Applicable Procedures, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice.

Section 12.09 *No Recourse Against Others*. No director, officer, employee, incorporator or stockholder of the Company shall have any liability for any obligations of the Company under the Notes, the Indenture or any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Note, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.10 *Tax Withholding*. Notwithstanding anything herein to the contrary, the Company or any other withholding agent is permitted to withhold, or backup withhold, from interest payments and payments upon conversion, redemption or maturity of the Notes, any amounts the Company or other withholding agent is required to withhold or backup withhold by law. If the Company or other withholding agent pays withholding taxes or backup withholding on behalf of a Holder or beneficial owner, the Company or other withholding agent may, at its option, set off any such payment against payments of cash and Common Stock payable on the Notes or proceeds paid or credited to the Holder or beneficial owner.

Section 12.11 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 12.12 *U.S.A. Patriot Act*. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each Person that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 12.13 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use

reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

AMICUS THERAPEUTICS, INC.

By: /s/ William D. Baird, III
Name: William D. Baird, III
Title: Chief Financial Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: /s/ Shawn Goffinet
Name: Shawn Goffinet
Title: Assistant Vice President

[*Signature Page to Indenture*]

SCHEDULE A

The following table sets forth the number of Additional Shares by which the Conversion Rate shall be increased pursuant to Section 4.06 based on the Stock Price and the Effective Date or date of Redemption Notice, as the case may be, set forth below.

Effective Date/Date of the Redemption Notice	$4.80	$5.00	$5.25	$5.75	$6.12	$6.75	$7.96	$10.00	$12.50	$15.00	$17.50
December 21, 2016	44.9346	41.5364	37.6152	31.0839	27.1211	21.6981	14.3748	7.0156	2.5389	0.6611	0.0344
December 15, 2017	44.9346	40.1356	36.1887	29.6900	25.7797	20.4622	13.3959	6.5479	2.3621	0.5877	0.0038
December 15, 2018	44.9346	39.0484	35.0102	28.4047	24.4814	19.2581	12.3914	6.0280	2.1941	0.5388	0.0000
December 15, 2019	44.9346	38.1340	33.8889	27.0233	23.0474	17.8882	11.2688	5.3726	1.9753	0.4927	0.0000
December 15, 2020	44.9346	37.6819	32.9168	25.3713	21.1165	15.9332	9.8035	4.4741	1.6513	0.4189	0.0000
December 15, 2021	44.9346	37.2013	32.4108	24.3784	19.4565	13.3605	7.1733	3.2416	1.1627	0.2737	0.0000
December 15, 2022	44.9346	37.0013	31.8394	23.4409	17.7888	10.7583	3.6183	1.6445	0.5594	0.0900	0.0000
December 15, 2023	44.9346	36.6013	27.0775	10.5143	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

EXHIBIT A

[FORM OF FACE OF NOTE]

[For Global Notes, include the following legend (the "**Global Notes Legend**"):]

[THIS SECURITY IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.]

[For all Notes that are Restricted Notes, include the following legend (the "**Restricted Notes Legend**"):]

[NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:

(A) TO AMICUS THERAPEUTICS, INC. (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATEST OF: (1) THE DATE THAT IS ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THIS SECURITY OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; (2) THE DATE ON WHICH THE COMPANY HAS INSTRUCTED THE TRUSTEE THAT THE FOREGOING RESTRICTIONS WILL NO LONGER APPLY IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THE INDENTURE AND (3) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW.

WITH RESPECT TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), PRIOR TO THE RESALE RESTRICTION TERMINATION DATE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

Amicus Therapeutics, Inc.

3.00% Convertible Senior Notes due 2023

No.: [ ]

CUSIP: [ ]

ISIN: [ ]

Principal
Amount $ [ ] [*For Global Notes, include the following*: as revised by the Schedule of Increases and Decreases in the Global Note attached hereto]

Amicus Therapeutics, Inc., a Delaware corporation (the "**Company**"), promises to pay to [ ] [include "*Cede & Co." for Global Note*] or registered assigns, the principal amount of [*add principal amount in words*] $[ ] on December 15, 2023 (the "**Maturity Date**").

Interest Payment Dates: June 15 and December 15.

Regular Record Dates: June 1 and December 1.

Additional provisions of this Note are set forth on the other side of this Note.

IN WITNESS WHEREOF, Amicus Therapeutics, Inc. has caused this instrument to be signed manually or by facsimile by one of its duly authorized Officers.

AMICUS THERAPEUTICS, INC.

By: _____
Name:
Title:

This is one of the Notes of the series designated herein, referred to in the within-mentioned Indenture.

Dated:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

Amicus Therapeutics, Inc.

3.00% Convertible Senior Notes due 2023

This Note is one of a duly authorized issue of securities of the Company (herein called the "**Notes**"), issued under the Indenture dated as of December 21, 2016 by and between the Company and Wilmington Trust, National Association, herein called the "**Trustee**," and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. In the event of a conflict between the terms of the Indenture and this Note, the terms of the Indenture shall govern.

The Company will pay cash interest on the unpaid principal amount of this Note at a rate of 3.00% per year. Interest will accrue from the most recent date on which interest has been paid or duly provided for or, if no interest has been paid, from [ ][*insert* December 21, 2016 *for Initial Notes*]. Except as provided in the Indenture, interest will be paid to the Person in whose name this Note is registered at the Close of Business on the Regular Record Date immediately preceding the relevant Interest Payment Date semiannually in arrears on each Interest Payment Date; *provided* that, if any Interest Payment Date, Maturity Date, Redemption Date or Fundamental Change Purchase Date with respect to this Note falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay. Interest on the Notes shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. Except as provided in the Indenture, no interest shall be paid with respect to Notes surrendered for conversion.

As provided in and subject to the provisions of the Indenture, the Company may redeem this Note on or after December 19, 2020 under certain conditions specified in Article 11 of the Indenture. This Note does not benefit from a sinking fund.

As provided in and subject to the provisions of the Indenture, upon the occurrence of a Fundamental Change the Holder of this Note will have the right, at such Holder's option, to require the Company to purchase this Note, or any portion of this Note such that the principal amount of this Note that is not purchased equals $1,000 or an integral multiple of $1,000 in excess thereof, on the Fundamental Change Purchase Date at a price equal to the Fundamental Change Purchase Price for such Fundamental Change Purchase Date.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option (i) during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the Close of Business on the Business Day immediately preceding September 15, 2023, and (ii) on or after September 15, 2023, at any time prior to the Close of Business on the second Business Day immediately preceding the Maturity Date, to convert this Note or a portion of this Note such that the principal amount of this Note that is not converted equals $1,000 or an integral multiple of $1,000 in excess thereof, into an amount of

cash, a number of shares of Common Stock, or a combination of cash and shares of Common Stock, if any, as the case may be, determined in accordance with Article 4 of the Indenture.

As provided in and subject to the provisions of the Indenture, the Company will make all payments in respect of the Fundamental Change Purchase Price or Redemption Price for, and the principal amount of, this Note to the Holder that surrenders this Note to the Paying Agent to collect such payments in respect of this Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Note, the Holders of not less than 25% in principal amount of the Notes at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity satisfactory thereto, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity, and shall not have received from the Holders of a majority in principal amount of Notes at the time Outstanding a direction inconsistent with such request. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of the principal hereof, premium, if any, or interest hereon, the Fundamental Change Purchase Price or Redemption Price, and the amount of cash, the number of shares of Common Stock or the combination thereof, as the case may be, due upon conversion of this Note or after the respective due dates expressed in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal of (including the Fundamental Change Purchase Price or Redemption Price), premium, interest on and the amount of cash, a number of shares of Common Stock or a combination of cash and shares of Common Stock, if any, as the case may be, due upon conversion of this Note at the time, place and rate, and in the coin and currency herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer to the Trustee, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon a new Note of this series and of like tenor for the same aggregate principal amount will be issued to the designated transferee.

The Notes are issuable only in registered form without coupons in minimum denominations of $1,000 and integral multiples of $1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or Trustee may treat the Person in whose name the Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture. If any provision of this Note limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive, Cranbury
NJ 08512

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (which is such that the principal amount of the portion of this Note that will not be converted equals $1,000 or an integral multiple of $1,000 in excess thereof) below designated, into an amount of cash, a number of shares of Common Stock or a combination of cash and shares of Common Stock, if any, as the case may be, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any Notes representing any unconverted principal amount hereof, be paid and/or issued and/or delivered, as the case may be, to the registered Holder hereof unless a different name is indicated below.

Subject to certain exceptions set forth in the Indenture, if this notice is being delivered after the Close of Business on a Regular Record Date and prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, this notice must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Note to be converted. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect to such issuance and transfer as set forth in the Indenture.

Principal amount to be converted (if less than all):

$

[The Beneficial Ownership Percentage of the undersigned Holder is:](1)

Dated: _____

Signature(s)
(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee
(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(1) To be included in accordance with Section 4.03(f) as applicable.

(i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange

Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.)

Fill in if a check is to be issued, or shares of Common Stock or Notes are to be registered, otherwise than to or in the name of the registered Holder.

(Name)

(Address)

Please print name and address
(including zip code)

(Social Security or other Taxpayer
Identifying Number)

Dated: _____

Signature(s)
(Sign exactly as such Person's name appears above)

Signature Guarantee
(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:
(i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee.)

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE]

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive, Cranbury
NJ 08512

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Amicus Therapeutics, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (i) the entire principal amount of this Note, or the portion thereof (that is such that the portion not to be purchased has a principal amount equal to $1,000 or an integral multiple of $1,000 in excess thereof) below designated, and (ii) if such Fundamental Change Purchase Date does not occur during the period after a Regular Record Date and on or prior to the Interest Payment Date corresponding to such Regular Record Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Purchase Date.

Principal amount to be purchased (if less than all):

$

Certificate number (if Notes are in certificated form)

Dated: _____

Signature(s)
(Sign exactly as your name appears on the other side of this Note)

Social Security or Other Taxpayer Identification Number

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

For value received,

hereby sell(s), assign(s) and transfer(s) unto

(Please insert social security or Taxpayer Identification Number of assignee)

the within Note, and hereby irrevocably constitutes and appoints to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

o To Amicus Therapeutics, Inc. or a subsidiary thereof; or

o Pursuant to a registration statement which has become effective under the Securities Act of 1933, as amended; or

o To a qualified institutional buyer in compliance with Rule 144A under the Securities Act of 1933, as amended; or

o Pursuant to an exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

TO BE COMPLETED BY PURCHASER IF THE THIRD BOX ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____ Signed:

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof, provided that if the fourth box is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Company or the Trustee may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.11 of the Indenture shall have been satisfied.

Dated: _____

Signature(s)

(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee

(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee)

ATTACHMENT 4

[*Insert for Global Note*]

SCHEDULE OF INCREASES AND DECREASES IN THE GLOBAL NOTE
Initial Principal Amount of Global Note: [ ]

Date	Amount of Increase in Principal Amount of Global Note	Amount of Decrease in Principal Amount of Global Note	Principal Amount of Global Note After Increase or Decrease	Notation by Registrar, Note Custodian or authorized signatory of Trustee

EXHIBIT B

[FORM OF FREE TRANSFERABILITY CERTIFICATE]

Officer's Certificate

[NAME OF OFFICER], the [TITLE] of Amicus Therapeutics, Inc., a Delaware corporation (the "**Company**"), does hereby certify, in connection with the sale of $250,000,000 aggregate principal amount of the Company's 3.00% Convertible Senior Notes due 2023 (the "**Notes**") pursuant to the terms of the Indenture, dated as of December 21, 2016 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company and Wilmington Trust, National Association (the "**Trustee**"), that:

1. The undersigned is permitted to sign this "Officer's Certificate" on behalf of the Company, as the term "Officer's Certificate" is defined in the Indenture.

2. The undersigned has read the Indenture and the definitions therein relating to the occurrence of the Resale Restriction Termination Date and the removal of the Restricted Notes Legend.

3. In the opinion of the undersigned, the undersigned has made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the delivery of this certificate provided for in the Indenture have been complied with.

4. All conditions precedent described herein as provided for in the Indenture have been complied with.

5. The Resale Restriction Termination Date is [DATE].

In accordance with Section 2.08 of the Indenture, the Company hereby instructs the Trustee as follows:

1. To take those actions necessary so that the Restricted Notes Legend and set forth on the Restricted Global Notes shall be deemed removed from such Global Notes in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

2. To take those actions necessary so that the restricted CUSIP number for the Restricted Global Notes shall be removed from such Global Notes and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be [ ], in accordance with the terms and conditions of the Restricted Global Notes and as provided in the Indenture, without further action on the part of the Holders.

[*Signature page follows.*]

IN WITNESS WHEREOF, we have signed this certificate as of [ ].

AMICUS THERAPEUTICS, INC.

By: _____
Name:
Title:

EXHIBIT C

[FORM OF RESTRICTED STOCK LEGEND]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), EXCEPT:

(A) TO AMICUS THERAPEUTICS, INC. (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY

RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATEST OF: (1) THE DATE THAT IS ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE COMPANY'S 3.00% CONVERTIBLE SENIOR NOTES DUE 2023 (THE "NOTES")(INCLUDING THE LAST DATE OF ISSUANCE OF ADDITIONAL NOTES PURSUANT TO THE EXERCISE OF THE INITIAL PURCHASERS' OPTION TO PURCHASE ADDITIONAL NOTES) OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; (2) THE DATE ON WHICH THE COMPANY HAS INSTRUCTED THE TRUSTEE FOR THE NOTES THAT THE SUBSTANTIALLY SIMILAR RESTRICTIONS APPLICABLE TO THE NOTES WILL NO LONGER APPLY IN ACCORDANCE WITH THE

PROCEDURES DESCRIBED IN THE INDENTURE GOVERNING THE NOTES AND (3) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW.

WITH RESPECT TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), PRIOR TO THE RESALE RESTRICTION TERMINATION DATE, THE COMPANY AND THE COMPANY'S TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Exhibit 10.1

EXECUTION VERSION

GOLDMAN, SACHS & CO. | 200 WEST STREET | NEW YORK, NEW YORK 10282-2198 | TEL: 212-902-1000

Opening Transaction

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

A/C: 051932044

From: Goldman, Sachs & Co.

Re: Base Capped Call Transaction

Ref. No: SDB3300776504

Date: December 15, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Goldman, Sachs & Co. ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in

---

reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of The Goldman Sachs Group, Inc. ("**GS Group**") as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business). All of the obligations of Dealer hereunder shall be unconditionally guaranteed in favor of Counterparty by GS Group under the guarantee filed as Exhibit 10.45 to GS Group's Form 10-K filed with the Securities and Exchange Commission on February 7, 2006.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 15, 2016
Effective Date:	The closing date of the initial issuance of the Convertible Securities.
Option Style:	Modified American, as described under "Procedures for Exercise" below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value USD0.01 (Ticker Symbol: "FOLD").
Number of Options:	The number of Convertible Securities constituting

	Firm Securities (as defined in the Purchase Agreement) in denominations of USD1,000 principal amount issued by Counterparty on the closing date for the initial issuance of the Convertible Securities. For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.
Option Entitlement:	As of any date, a number of Shares per Option equal to the "Conversion Rate" (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	20.00%
Premium:	USD2,421,000.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount; *provided* that, no Conversion Date shall be deemed to have occurred with respect to Exchanged Securities or Excluded Convertible Securities (such Convertible Securities, other than Exchanged Securities and Excluded Convertible Securities, the "**Relevant Convertible Securities**" for such Conversion Date).
Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the

	Indenture. For the avoidance of doubt, (i) Convertible Securities are "accepted" for purposes of the foregoing upon the earlier of the declaration of the designated financial institution's agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.
Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the "Maturity Date" (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised, subject to "Notice of Exercise" below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th "Scheduled Trading Day" (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration Date (such period, the "**Final Conversion Period**"), the Notice Deadline shall be 5:00 P.M., New York City time, on the "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to

	make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of (i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the "**Make-Whole Convertible Securities**")), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" (as defined in the Indenture) and (iv) the first "Scheduled Trading Day" (as defined in the Indenture) of the relevant "Observation Period" (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii) above. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.
Notice of Final Convertible Security Settlement Method:	Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to

the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If

applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.

Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:	As specified in Section 6(b) below.

Settlement Terms:

Settlement Date:	For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 P.M., New York City time.
Delivery Obligation:	In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date, Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"): (i) (I) the product of the Applicable Percentage and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or (ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture,

as applicable;

for each of clauses (i) and (ii), determined as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date. Notwithstanding the foregoing, in all events the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed

(y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash Settlement Averaging Period is less than or equal to USD1000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method:

For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the

Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions:

In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered

into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Cash Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation: No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with

respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case may be, as set forth above, in any way).

Net Convertible Share Obligation Value: With respect to Relevant Convertible Securities as to a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.

Total Convertible Share Obligation Value: With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture) *multiplied by* (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided* that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Share Obligation Value Price: The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment: Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of

the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided* that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/ Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the

	nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be a corporation organized under the laws of the United States, any state thereof or the District of Columbia and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.
Notice of Merger Consideration and Consequences:	Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to receive more than a single type of

	consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the types and amounts of consideration to be received by the holders of Shares that affirmatively make such an election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.
Consequences of Announcement Event:	Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.
Announcement Event:	(i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the

	Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Termination Event(s):	Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).

Additional Disruption Events:	
(a) Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided*, *further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".
(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Hedging Disruption:	Applicable; *provided* that: (i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by:

(a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date”;

(b) inserting the following two phrases at the end of such Section:

“For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further

avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing and other terms.”;

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words “to terminate the Transaction”, with the words “ to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and (y) made by the Hedging Party in its commercially reasonable discretion)”.

(e) Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer
Determining Party:	Dealer
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer’s confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

Chase Manhattan Bank New York
For A/C Goldman, Sachs & Co.
A/C #930-1-011483
ABA: 021-000021

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is:

200 West Street, New York, New York 10282-2198

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To:	Amicus Therapeutics, Inc. 1 Cedar Brook Drive

	Cranbury, NJ 08512
Attn:	Chip Baird Chief Financial Officer
Telephone:	609-662-5022
Email:	cbaird@amicusrx.com

With a copy to:

Attn:	Ellen Rosenberg General Counsel
Telephone:	609-662-5019
Email:	erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

To:	Goldman, Sachs & Co. 200 West Street New York, NY 10282-2198
Attn:	Bennett Schachter Structured Equity Group
Telephone:	212-902-2568
Facsimile:	212-902-3000
Email:	bennett.schachter@gs.com

With a copy to:

Attn:	Joshua Murray
Telephone:	212-902-3291
Email:	Joshua.Murray@gs.com

And email notification to the following address:
Eq-derivs-notifications@am.ibd.gs.com

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the

Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and (C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or

any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of

Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the

"**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event, and (2) the number of Options then outstanding; *provided*, *further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith

had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product of (I) the Applicable Percentage, (II) the excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded Conversion Event shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions"

below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"). The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of (A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any

Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**"); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of

	cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A)

enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and

certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee

will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so

designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater

than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Firm Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other

party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty

represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters*.

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any

such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations).

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following

words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS

OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

GOLDMAN, SACHS & CO.

By: s/Daniela Rouse
Name: Daniela Rouse
Title: Vice President

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: s/William D. Baird III

Name: William D. Baird III
Title: CFO

Exhibit 10.2

EXECUTION VERSION

J.P.Morgan

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

From: JPMorgan Chase Bank, National Association, London Branch

Re: Base Capped Call Transaction

Date: December 15, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in

reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of JPMorgan Chase & Co. as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business).

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any

other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 15, 2016
Effective Date:	The closing date of the initial issuance of the Convertible Securities.
Option Style:	Modified American, as described under "Procedures for Exercise" below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value USD0.01 (Ticker Symbol: "FOLD").
Number of Options:	The number of Convertible Securities constituting Firm Securities (as defined in the Purchase Agreement) in denominations of USD1,000 principal amount issued by Counterparty on the closing date

	for the initial issuance of the Convertible Securities. For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.
Option Entitlement:	As of any date, a number of Shares per Option equal to the "Conversion Rate" (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	30.00%
Premium:	USD3,631,500.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount; *provided* that, no Conversion Date shall be deemed to have occurred with respect to Exchanged Securities or Excluded Convertible Securities (such Convertible Securities, other than Exchanged Securities and Excluded Convertible Securities, the "**Relevant Convertible Securities**" for such Conversion Date).
Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the Indenture. For the avoidance of doubt, (i)

Convertible Securities are “accepted” for purposes of the foregoing upon the earlier of the declaration of

the designated financial institution’s agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.

Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second “Scheduled Trading Day” (as defined in the Indenture) immediately preceding the “Maturity Date” (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised, subject to “Notice of Exercise” below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th “Scheduled Trading Day” (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration Date (such period, the “**Final Conversion Period**”), the Notice Deadline shall be 5:00 P.M., New York City time, on the “Scheduled Trading Day” (as defined in the Indenture) immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently

extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of (i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the “**Make-Whole Convertible Securities**”)), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the “Specified Dollar Amount” (as defined in the Indenture) and (iv) the first “Scheduled Trading Day” (as defined in the Indenture) of the relevant “Observation Period” (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii) above. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer’s obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.

Notice of Final Convertible Security Settlement Method:	Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method

that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.

Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:	As specified in Section 6(b) below.

Settlement Terms:

Settlement Date:	For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 P.M., New York City time.
Delivery Obligation:	In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date, Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"): (i) (I) the product of the Applicable Percentage and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or (ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture, as applicable; for each of clauses (i) and (ii), determined as if

Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date. Notwithstanding the foregoing, in all events the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed (y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash

Settlement Averaging Period is less than or equal to USD1,000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method: For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the Convertible Security Settlement Method shall be the settlement method actually so elected by

Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions: In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the

Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Cash Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without

limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation:	No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case

may be, as set forth above, in any way).

Net Convertible Share Obligation Value:	With respect to Relevant Convertible Securities as to a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.
Total Convertible Share Obligation Value:	With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture) *multiplied by* (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided* that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.
Share Obligation Value Price:	The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.
Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part,

deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment:	Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall

make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to

the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided* that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/ Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term

relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may

include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be a corporation organized under the laws of the United States, any state thereof or the District of Columbia and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.

Notice of Merger Consideration and Consequences: Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to receive more than a single type of consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the

types and amounts of consideration to be received by the holders of Shares that affirmatively make such an election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.

Consequences of Announcement Event: Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event: (i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity

Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer

and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.

Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Termination Event(s):	Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).

Additional Disruption Events:

(a) Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided, further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".
(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Hedging Disruption:	Applicable; *provided* that: (i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by: (a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date"; (b) inserting the following two phrases at the end of such Section: "For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above

must be available on commercially reasonable pricing and other terms.";

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words "to terminate the Transaction", with the words " to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and (y) made by the Hedging Party in its commercially reasonable discretion)".

(e) Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer
Determining Party:	Dealer
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer's confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

To be provided by Dealer.

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is:

London

JPMorgan Chase Bank, National Association
London Branch
25 Bank Street
Canary Wharf
London E14 5JP
England

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To:	Amicus Therapeutics, Inc. 1 Cedar Brook Drive Cranbury, NJ 08512
Attn:	Chip Baird Chief Financial Officer
Telephone:	609-662-5022
Email:	cbaird@amicusrx.com

With a copy to:

Attn:	Ellen Rosenberg General Counsel
Telephone:	609-662-5019
Email:	erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

JPMorgan Chase Bank, National Association

EDG Marketing Support

Email:	edg_notices@jpmorgan.com edg.us.flow.corporates.mo@jpmorgan.com
Facsimile No:	1-866-886-4506

With a copy to:

Attention:	Santosh Sreenivasan
Title:	Managing Director, Head of Equity-Linked Capital Markets, Americas
Telephone No:	1-212-622-5604
Facsimile No:	1-212-622-6037

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and (C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or

any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the

"**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event, and (2) the number of Options then outstanding; *provided, further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product of (I) the Applicable Percentage, (II) the

excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded Conversion Event shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions"

below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"). The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of (A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any

Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to

require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**"); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of

	cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided*, *however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and

certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee

will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater

than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Firm Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty

represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters*.

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any

such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations).

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS

OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(x) *Role of Agent.* Each party agrees and acknowledges that (A) J.P. Morgan Securities LLC ("JPMS"), an affiliate of Dealer, has acted solely as agent and not as principal with respect to this Confirmation and the Transaction and (B) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction. JPMS is authorized to act as agent for Dealer.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

J.P. MORGAN SECURITIES LLC, as an agent for JPMorgan Chase Bank, National Association

By: s/Santosh Sreenivasan
Name: Santosh Sreenivasan
Title: Managing Director

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: William D. Baird. III
Name: William D. Baird. III
Title: CFO

extent of our regulation by the Prudential Regulation Authority are available from us on request.

Exhibit 10.3

EXECUTION VERSION

RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281
Telephone: (212) 858-7000

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

From: RBC Capital Markets, LLC
as agent for
Royal Bank of Canada

Re: Base Capped Call Transaction

Date: December 15, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Royal Bank of Canada ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of Royal Bank of Canada as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business).

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 15, 2016
Effective Date:	The closing date of the initial issuance of the Convertible Securities.
Option Style:	Modified American, as described under “Procedures for Exercise” below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value USD0.01 (Ticker Symbol: “FOLD”).
Number of Options:	The number of Convertible Securities constituting Firm Securities (as defined in the Purchase Agreement) in denominations of USD1,000 principal amount issued by Counterparty on the closing date for the initial issuance of the Convertible Securities. For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.

Option Entitlement:	As of any date, a number of Shares per Option equal to the “Conversion Rate” (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	50.00%
Premium:	USD6,052,500.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each “Conversion Date” (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount; *provided* that, no Conversion Date shall be deemed to have occurred with respect to Exchanged Securities or Excluded Convertible Securities (such Convertible Securities, other than Exchanged Securities and Excluded Convertible Securities, the “**Relevant Convertible Securities**” for such Conversion Date).
Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the

Indenture. For the avoidance of doubt, (i) Convertible Securities are "accepted" for purposes of the foregoing upon the earlier of the declaration of the designated financial institution's agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial

institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.

Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the "Maturity Date" (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised, subject to "Notice of Exercise" below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th "Scheduled Trading Day" (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration Date (such period, the "**Final Conversion Period**"), the Notice Deadline shall be 5:00 P.M., New York City time, on the "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of

(i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the "**Make-Whole Convertible Securities**")), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" (as defined in the Indenture) and (iv) the first "Scheduled Trading Day" (as defined in the Indenture) of the relevant "Observation Period" (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii) above. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities

Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.

Notice of Final Convertible Security Settlement Method: Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.

Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of

Giving Notice: As specified in Section 6(b) below.

Settlement Terms:

Settlement Date: For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 P.M., New York City time.

Delivery Obligation: In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date, Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"):

(i) (I) the product of the Applicable Percentage and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or

(ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture, as applicable;

for each of clauses (i) and (ii), determined as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement

Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily

VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date. Notwithstanding the foregoing, in all events the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed (y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash Settlement Averaging Period is less than or equal to USD1000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method:

For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had

made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions:

In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable

for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Cash Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation: No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case may be, as set forth above, in any way).

Net Convertible Share Obligation Value: With respect to Relevant Convertible Securities as to

a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.

Total Convertible Share Obligation Value: With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture) *multiplied by* (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided* that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary

Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Share Obligation Value Price: The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of

delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment: Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided*

that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of

Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/ Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such

adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be a corporation organized under the laws of the United States, any state thereof or the District of Columbia and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.

Notice of Merger Consideration and Consequences: Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to

receive more than a single type of consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the types and amounts of consideration to be received by the holders of Shares that affirmatively make such an

election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.

Consequences of Announcement Event: Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event: (i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its

subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE

MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Termination Event(s): Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).

Additional Disruption Events:

(a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing

the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided*, *further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".

(b) Failure to Deliver: Applicable

(c) Insolvency Filing: Applicable

(d) Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by:

(a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date";

(b) inserting the following two phrases at the end of such Section:

"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing and other terms.";

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words "to terminate the Transaction", with the words " to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and

(y) made by the Hedging Party in its commercially reasonable discretion)".

(e) Increased Cost of Hedging: Not Applicable

Hedging Party: Dealer

Determining Party: Dealer

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer's confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

To be provided by Dealer.

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is: New York

Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281
Attention: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive

Cranbury, NJ 08512

Attn: Chip Baird
Chief Financial Officer
Telephone: 609-662-5022
Email: cbaird@amicusrx.com

With a copy to:

Attn: Ellen Rosenberg
General Counsel
Telephone: 609-662-5019
Email: erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

To: Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281

Attn: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053
Email: SEDDOC@rbccm.com

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and (C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy

Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the "**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event, and (2) the number of Options then outstanding; *provided*, *further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over

the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product of (I) the Applicable Percentage, (II) the excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded Conversion Event

shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions" below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"). The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a

Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of (A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**"); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section

7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i)

in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided*, *however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the

Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel

fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the

Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Firm Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters*.

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal Revenue Service Form W-8ECI, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes.

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for

the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(v) *Role of Agent.* Dealer has appointed, as its agent, its indirect wholly-owned subsidiary, RBC Capital Markets, LLC ("**RBCCM**"), for purposes of conducting, on Dealer's behalf, a business in privately negotiated transactions in options and other derivatives. Counterparty hereby is advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized RBCCM to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products. RBCCM does not act as agent of Counterparty. For the avoidance of doubt, any performance by Dealer of its obligations hereunder solely to RBCCM shall not relieve Dealer of such obligations. RBCCM's performance to Counterparty of Dealer's obligations hereunder shall relieve Dealer of such obligations to the extent of such performance. Any performance by Counterparty of its obligations

(including notice obligations) through or by means of RBCCM's agency for Dealer shall constitute good performance of Counterparty's obligations hereunder to Dealer.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

ROYAL BANK OF CANADA
by its agent
RBC Capital Markets, LLC

By: s/Amy Disbrow
Name: Amy Disbrow
Title: Associate Director

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: s/William D. Baird III
Name: William D. Baird III
Title: CFO

Exhibit 10.4

EXECUTION VERSION

GOLDMAN, SACHS & CO. | 200 WEST STREET | NEW YORK, NEW YORK 10282-2198 | TEL: 212-902-1000

Opening Transaction

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

A/C: 051932044

From: Goldman, Sachs & Co.

Re: Additional Capped Call Transaction

Ref. No: SDB3300778540

Date: December 19, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Goldman, Sachs & Co. ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 and the additional USD 25,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 issued pursuant to the option to purchase additional convertible securities exercised on the date hereof (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in

---

reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of The Goldman Sachs Group, Inc. ("**GS Group**") as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business). All of the obligations of Dealer hereunder shall be unconditionally guaranteed in favor of Counterparty by GS Group under the guarantee filed as Exhibit 10.45 to GS Group's Form 10-K filed with the Securities and Exchange Commission on February 7, 2006.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 19, 2016
Effective Date:	The closing date of the issuance of the Convertible Securities issued pursuant to the option to purchase additional Convertible Securities exercised on the date hereof.
Option Style:	Modified American, as described under "Procedures for Exercise" below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value

	USD0.01 (Ticker Symbol: "FOLD").
Number of Options:	The number of Optional Securities (as defined in the Purchase Agreement) in denominations of USD1,000 principal amount purchased pursuant to the exercise by Goldman, Sachs & Co. and J.P. Morgan Securities LLC as representatives (the "**Representatives**") of the Initial Purchasers (as defined in the Purchase Agreement), of their option to purchase additional Convertible Securities pursuant to Section 2 of the Purchase Agreement (as defined below). For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.
Option Entitlement:	As of any date, a number of Shares per Option equal to the "Conversion Rate" (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	20.00%
Premium:	USD269,000.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount that are not "Relevant Convertible Securities" under (and as defined in) the confirmation between the parties hereto regarding the Base Capped Call Hedge Transaction dated December 15, 2016 (Transaction Ref. No. SDB3300776504) (the "**Base Capped Call Transaction Confirmation**"); *provided* that, no Conversion Date shall be deemed to

	have occurred with respect to Exchanged Securities, Excluded Convertible Securities or "Excluded Convertible Securities" under (and as defined in) the Base Capped Call Transaction Confirmation (such Convertible Securities, other than Exchanged Securities, Excluded Convertible Securities and such "Excluded Convertible Securities" under the Base Capped Call Transaction Confirmation, the "**Relevant Convertible Securities**" for such Conversion Date). For the purposes of determining whether any Convertible Securities will be Relevant Convertible Securities or Excluded Convertible Securities hereunder or "Relevant Convertible Securities" or "Excluded Convertible Securities" under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are converted pursuant to the Indenture shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated.
Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the Indenture. For the avoidance of doubt, (i) Convertible Securities are "accepted" for purposes of the foregoing upon the earlier of the declaration of the designated financial institution's agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.
Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the "Maturity Date" (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall

	be automatically exercised, subject to "Notice of Exercise" below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th "Scheduled Trading Day" (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration Date (such period, the "**Final Conversion Period**"), the Notice Deadline shall be 5:00 P.M., New York City time, on the "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of (i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the "**Make-Whole Convertible Securities**")), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" (as defined in the Indenture) and (iv) the first "Scheduled Trading Day" (as defined in the Indenture) of the relevant "Observation Period" (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii)

above; *provided, further,* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutatis mutandis*, to this Confirmation. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.

Notice of Final Convertible Security Settlement Method:	Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.
Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:	As specified in Section 6(b) below.

Settlement Terms:

Settlement Date:	For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice

of Delivery Obligation prior to 5:00 P.M., New York City time.

Delivery Obligation:	In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date, Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"): (i) (I) the product of the Applicable Percentage and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or (ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture, as applicable; for each of clauses (i) and (ii), determined as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion

Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date. Notwithstanding the foregoing, in all events the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed (y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash Settlement Averaging Period is less than or equal to USD1000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method: For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions: In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of

such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Cash Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation: No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case may be, as set forth above, in any way).

Net Convertible Share Obligation Value: With respect to Relevant Convertible Securities as to a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.

Total Convertible Share Obligation Value: With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture)

multiplied by (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided* that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Share Obligation Value Price: The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment: Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of Options, the

Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided* that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be a corporation organized under the laws of the United States, any state thereof or the District of Columbia

	and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.
Notice of Merger Consideration and Consequences:	Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to receive more than a single type of consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the types and amounts of consideration to be received by the holders of Shares that affirmatively make such an election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.
Consequences of Announcement Event:	Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event

	shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.
Announcement Event:	(i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the

announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Termination Event(s): Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).

Additional Disruption Events:

(a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided, further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory

authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".

(b) Failure to Deliver: Applicable

(c) Insolvency Filing: Applicable

(d) Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by:

(a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date";

(b) inserting the following two phrases at the end of such Section:

"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing and other terms.";

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words "to terminate the Transaction", with the words " to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and (y) made by the Hedging Party in its commercially reasonable discretion)".

(e) Increased Cost of Hedging: Not Applicable

Hedging Party: Dealer

Determining Party: Dealer

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer's confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

Chase Manhattan Bank New York
For A/C Goldman, Sachs & Co.
A/C #930-1-011483
ABA: 021-000021

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is:

200 West Street, New York, New York 10282-2198

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

Attn: Chip Baird
Chief Financial Officer
Telephone: 609-662-5022
Email: cbaird@amicusrx.com

With a copy to:

Attn: Ellen Rosenberg
General Counsel
Telephone: 609-662-5019
Email: erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

To: Goldman, Sachs & Co.
200 West Street
New York, NY 10282-2198

Attn: Bennett Schachter
Structured Equity Group
Telephone: 212-902-2568
Facsimile: 212-902-3000
Email: bennett.schachter@gs.com

With a copy to:

Attn: Joshua Murray
Telephone: 212-902-3291
Email: Joshua.Murray@gs.com

And email notification to the following address:
Eq-derivs-notifications@am.ibd.gs.com

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period,"

as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and

(C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is

acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of

Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the "**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event *minus* the "Affected Number of Options" (as defined in the Base Capped Call Transaction Confirmation), if any, that relate to such Excluded Conversion Event (and, for the purposes of determining whether any Options under this Confirmation or under the Base Capped Call Transaction Confirmation will be among the Affected Number of Options hereunder or among the "Affected Number of Options" under, and as defined in, the Base Capped Call Transaction Confirmation, the Affected Number of Options shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated), and (2) the number of Options then outstanding; *provided*, *further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation

Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product

of (I) the Applicable Percentage, (II) the excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded Conversion Event shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions" below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"); *provided* that any "Repayment Notice" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such Repayment Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an

Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of (A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event (and for the purposes of determining whether any Convertible Securities will be Repayment Convertible Securities hereunder or under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are subject to a Repayment Event shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated) and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**"); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within

Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S.

public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to

private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any

Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the

case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it

owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Optional Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any

such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters*.

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations).

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more

of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

GOLDMAN, SACHS & CO.

By: s/Daniela Rouse
Name: Daniela Rouse
Title: Vice President

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: s/William D. Baird III
Name: William D. Baird III
Title: CFO

Exhibit 10.5

EXECUTION VERSION

J.P.Morgan

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

From: JPMorgan Chase Bank, National Association, London Branch

Re: Additional Capped Call Transaction

Date: December 19, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 and the additional USD 25,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 issued pursuant to the option to purchase additional convertible securities exercised on the date hereof (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in

reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of JPMorgan Chase & Co. as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business).

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 19, 2016
Effective Date:	The closing date of the issuance of the Convertible Securities issued pursuant to the option to purchase additional Convertible Securities exercised on the date hereof.
Option Style:	Modified American, as described under "Procedures for Exercise" below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value USD0.01 (Ticker Symbol: "FOLD").
Number of Options:	The number of Optional Securities (as defined in the Purchase Agreement) in denominations of USD1,000

	principal amount purchased pursuant to the exercise by Goldman, Sachs & Co. and J.P. Morgan Securities LLC as representatives (the "**Representatives**") of the Initial Purchasers (as defined in the Purchase Agreement), of their option to purchase additional Convertible Securities pursuant to Section 2 of the Purchase Agreement (as defined below). For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.
Option Entitlement:	As of any date, a number of Shares per Option equal to the "Conversion Rate" (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	30.00%
Premium:	USD403,500.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount that are not "Relevant Convertible Securities" under (and as defined in) the confirmation between the parties hereto regarding the Base Capped Call Hedge Transaction dated December 15, 2016 (the "**Base Capped Call Transaction Confirmation**"); *provided* that, no Conversion Date shall be deemed to have occurred with respect to Exchanged Securities, or Excluded Convertible Securities or "Excluded Convertible Securities" under (and as defined in) the Base Capped Call Transaction Confirmation (such Convertible

	Securities, other than Exchanged Securities, Excluded Convertible Securities and such "Excluded Convertible Securities" under the Base Capped Call Transaction Confirmation, the "**Relevant Convertible Securities**" for such Conversion Date). For the purposes of determining whether any Convertible Securities will be Relevant Convertible Securities or Excluded Convertible Securities hereunder or "Relevant Convertible Securities" or "Excluded Convertible Securities" under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are converted pursuant to the Indenture shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated.
Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the Indenture. For the avoidance of doubt, (i) Convertible Securities are "accepted" for purposes of the foregoing upon the earlier of the declaration of the designated financial institution's agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.
Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the "Maturity Date" (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised, subject to "Notice of Exercise" below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City

	time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th "Scheduled Trading Day" (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration

	Date (such period, the "**Final Conversion Period**"), the Notice Deadline shall be 5:00 P.M., New York City time, on the "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of (i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the "**Make-Whole Convertible Securities**")), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" (as defined in the Indenture) and (iv) the first "Scheduled Trading Day" (as defined in the Indenture) of the relevant "Observation Period" (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii) above; *provided, further,* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of

	Exercise shall apply, *mutatis mutandis*, to this Confirmation. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.
Notice of Final Convertible Security Settlement Method:	Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.
Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:	As specified in Section 6(b) below.
Settlement Terms:	
Settlement Date:	For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 P.M., New York City time.
Delivery Obligation:	In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date,

Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"):

(i) (I) the product of the Applicable Percentage and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or

(ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture, as applicable;

for each of clauses (i) and (ii), determined as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Notwithstanding the foregoing, in all events the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed (y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash Settlement Averaging Period is less than or equal to USD1,000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method:

For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation

Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions:

In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with

a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Cash Settlement Averaging Period

shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation:

No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the

Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case may be, as set forth above, in any way).

Net Convertible Share Obligation Value: With respect to Relevant Convertible Securities as to a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.

Total Convertible Share Obligation Value: With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture) *multiplied by* (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash

equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided* that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Share Obligation Value Price: The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment: Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the

Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided* that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including,

without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/ Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such adjustment shall be made without regard to

any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be a corporation organized under the laws of the United States, any state thereof or the District of Columbia and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent

Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.

Notice of Merger Consideration and Consequences:	Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to receive more than a single type of consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the types and amounts of consideration to be received by the holders of Shares that affirmatively make such an election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.
Consequences of Announcement Event:	Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.
Announcement Event:	(i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as

defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the

impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for the avoidance of doubt, the occurrence of an Announcement Event with respect

to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Termination Event(s): Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).

Additional Disruption Events:

(a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided*, *further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar

legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".

(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Hedging Disruption:	Applicable; *provided* that: (i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by: (a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date"; (b) inserting the following two phrases at the end of such Section: "For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing and other terms."; (ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words "to terminate the Transaction", with the words " to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and (y) made by the Hedging Party in its commercially reasonable discretion)".
(e) Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer
Determining Party:	Dealer
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer's confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

To be provided by Dealer.

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is:

London
JPMorgan Chase Bank, National Association
London Branch
25 Bank Street
Canary Wharf
London E14 5JP
England

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To:	Amicus Therapeutics, Inc. 1 Cedar Brook Drive Cranbury, NJ 08512
Attn:	Chip Baird Chief Financial Officer
Telephone:	609-662-5022
Email:	cbaird@amicusrx.com

With a copy to:

Attn:	Ellen Rosenberg General Counsel
Telephone:	609-662-5019
Email:	erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

JPMorgan Chase Bank, National Association
EDG Marketing Support

Email:	edg_notices@jpmorgan.com edg.us.flow.corporates.mo@jpmorgan.com
Facsimile No:	1-866-886-4506

With a copy to:

Attention:	Santosh Sreenivasan
Title:	Managing Director, Head of Equity-Linked Capital Markets, Americas
Telephone No:	1-212-622-5604
Facsimile No:	1-212-622-6037

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not

engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and (C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or

any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the

"**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event *minus* the "Affected Number of Options" (as defined in the Base Capped Call Transaction Confirmation), if any, that relate to such Excluded Conversion Event (and, for the purposes of determining whether any Options under this

Confirmation or under the Base Capped Call Transaction Confirmation will be among the Affected Number of Options hereunder or among the "Affected Number of Options" under, and as defined in, the Base Capped Call Transaction Confirmation, the Affected Number of Options shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated), and (2) the number of Options then outstanding; *provided, further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product of (I) the Applicable Percentage, (II) the excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded

Conversion Event shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions" below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"); *provided* that any "Repayment Notice" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such Repayment Notice shall apply, mutatis mutandis, to this Confirmation. The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of

(A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event (and for the purposes of determining whether any Convertible Securities will be Repayment Convertible Securities hereunder or under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are subject to a Repayment Event shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated) and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**"); *provided* that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by

	holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size,

(C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any

assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer

or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it

by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a

result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Optional Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters.*

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or

collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal

Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations).

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(x) *Role of Agent.* Each party agrees and acknowledges that (A) J.P. Morgan Securities LLC ("JPMS"), an affiliate of Dealer, has acted solely as agent and not as principal with respect to this Confirmation and the Transaction and (B) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction. JPMS is authorized to act as agent for Dealer.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between

Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

J.P. MORGAN SECURITIES LLC, as an agent for
JPMorgan Chase Bank, National Association

By: s/Santosh Sreenivasan
Name: Santosh Sreenivasan
Title: Managing Director

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: William D. Baird. III
Name: William D. Baird. III
Title: CFO

Exhibit 10.6

EXECUTION VERSION

RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281
Telephone: (212) 858-7000

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

From: RBC Capital Markets,
LLC as agent for
Royal Bank of Canada

Re: Additional Capped Call Transaction

Date: December 19, 2016

Dear Ladies and Gentlemen:

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between Royal Bank of Canada ("**Dealer**") and Amicus Therapeutics, Inc. ("**Counterparty**"). This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (the "**2006 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2006 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture to be dated as of December 21, 2016 between Counterparty and Wilmington Trust, National Association, as trustee (the "**Indenture**"), relating to the USD 225,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 and the additional USD 25,000,000 principal amount of 3.00% Convertible Senior Notes due 2023 issued pursuant to the option to purchase additional convertible securities exercised on the date hereof (the "**Convertible Securities**"). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of execution of this Confirmation. If any relevant sections of the Indenture are changed, added or renumbered between the execution of this Confirmation and the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties, as evidenced by such draft of the Indenture. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended, modified or supplemented following its execution, any such amendment, modification or supplement will be disregarded for purposes of this Confirmation (other than Section 8(b)(ii) below) unless the parties agree otherwise in writing. The Transaction is subject to early unwind if the closing of the Convertible Securities is not consummated for any reason, as set forth below in Section 8(k).

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 1992 ISDA Master Agreement (Multicurrency—Cross Border) as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of Loss and Second Method and US Dollars ("**USD**") as the Termination Currency, (ii) the replacement of the word "third" in the last line of Section 5(a)(i) of the Agreement with the word "first" and (iii) in respect of Section 5(a)(vi) of the Agreement (a) the election that the "Cross Default" provisions shall apply to Dealer with a "Threshold Amount" equal to 3% of the shareholders' equity of Royal Bank of Canada as of the Trade Date, (b) the deletion of the phrase ", or becoming capable at such time of being declared," from clause (1) thereof, (c) the following language added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." and (d) the term "Specified Indebtedness" shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business).

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

The Transaction hereunder shall be the sole Transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	December 19, 2016
Effective Date:	The closing date of the issuance of the Convertible Securities issued pursuant to the option to purchase additional Convertible Securities exercised on the date hereof.
Option Style:	Modified American, as described under "Procedures for Exercise" below.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The Common Stock of Counterparty, par value USD0.01 (Ticker Symbol: "FOLD").
Number of Options:	The number of Optional Securities (as defined in the Purchase Agreement) in denominations of USD1,000 principal amount purchased pursuant to the exercise by Goldman, Sachs & Co. and J.P. Morgan Securities LLC as representatives (the "**Representatives**") of

	the Initial Purchasers (as defined in the Purchase Agreement), of their option to purchase additional Convertible Securities pursuant to Section 2 of the Purchase Agreement (as defined below). For the avoidance of doubt, the Number of Options outstanding shall be reduced by each exercise of Options hereunder.
Option Entitlement:	As of any date, a number of Shares per Option equal to the "Conversion Rate" (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment).
Fundamental Change Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.06 of the Indenture.
Discretionary Adjustment:	Any adjustment to the Conversion Rate pursuant to Section 4.05(b) of the Indenture.
Strike Price:	As of any date, an amount in USD equal to USD1,000 *divided by* the Option Entitlement as of such date. The Strike Price shall be rounded by the Calculation Agent in accordance with the applicable provisions of the Indenture.
Cap Price:	USD7.2000
Number of Shares:	As of any date, a number of Shares equal to the product of (i) the Applicable Percentage, (ii) the Number of Options and (iii) the Option Entitlement.
Applicable Percentage:	50.00%
Premium:	USD672,500.00
Premium Payment Date:	The Effective Date
Exchange:	The NASDAQ Global Market
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Securities each in denominations of USD1,000 principal amount that are not "Relevant Convertible Securities" under (and as defined in) the confirmation between the parties hereto regarding the Base Capped Call Hedge Transaction dated December 15, 2016 (the "**Base Capped Call Transaction Confirmation**"); *provided* that, no Conversion Date shall be deemed to have occurred with respect to Exchanged Securities, Excluded Convertible Securities or "Excluded Convertible Securities" under (and as defined in) the Base Capped Call Transaction Confirmation (such Convertible Securities, other than Exchanged Securities, Excluded Convertible Securities and such "Excluded Convertible Securities" under the Base Capped Call

Transaction Confirmation, the "**Relevant Convertible Securities**" for such Conversion Date). For the purposes of determining whether any Convertible Securities will be Relevant Convertible Securities or Excluded Convertible Securities hereunder or "Relevant Convertible Securities" or "Excluded Convertible Securities" under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are converted pursuant to the Indenture shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated.

Exchanged Securities:	With respect to any Conversion Date, any Convertible Securities with respect to which Counterparty makes the election described in Section 4.12 of the Indenture and the financial institution designated by Counterparty accepts such Convertible Securities in accordance with Section 4.12 of the Indenture. For the avoidance of doubt, (i) Convertible Securities are "accepted" for purposes of the foregoing upon the earlier of the declaration of the designated financial institution's agreement to exchange such Convertible Securities or delivery of such Convertible Securities to such financial institution for purposes of such exchange and (ii) any Exchanged Securities will be treated as Convertible Securities on any subsequent Conversion Date with respect to such securities, unless such securities are Exchanged Securities on such subsequent Conversion Date.
Excluded Convertible Securities:	Convertible Securities subject to the occurrence of an Excluded Conversion Event, as described in Section 8(b)(i).
Exercise Period:	The period from and excluding the Effective Date to and including the Expiration Date.
Expiration Date:	The earlier of (i) the last day on which any Convertible Securities remain outstanding and (ii) the second "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the "Maturity Date" (as defined in the Indenture).
Automatic Exercise on Conversion Dates:	Applicable; and means that on each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD1,000 principal amount shall be automatically exercised, subject to "Notice of Exercise" below.
Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, 5:00 P.M., New York City time, on (i) in the case the applicable Relevant Convertible Securities will be settled by Counterparty by delivery of Shares only (together with cash in lieu

of any fractional Share), the Scheduled Trading Day immediately following the relevant Conversion Date, or (ii) otherwise, the Scheduled Trading Day immediately preceding the first Scheduled Trading Day of the relevant Cash Settlement Averaging Period; *provided* that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the period from and including the 65th "Scheduled Trading Day" (as defined in the Indenture) prior to the Maturity Date, to and including the Expiration Date (such period, the "**Final Conversion Period**"), the Notice Deadline shall be 5:00 P.M., New York City time, on the "Scheduled Trading Day" (as defined in the Indenture) immediately preceding the Maturity Date.

Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder and such obligation in respect of such exercise shall be permanently extinguished unless Counterparty notifies Dealer in writing prior to 5:00 P.M., New York City time, on the Notice Deadline in respect of such exercise, of (i) the number of Relevant Convertible Securities being converted on the related Conversion Date (specifying, if applicable, whether all or any portion of such Convertible Securities are Convertible Securities as to which additional Shares would be added to the Conversion Rate (as defined in the Indenture) pursuant to Section 4.06 of the Indenture (the "**Make-Whole Convertible Securities**")), (ii) the scheduled settlement date under the Indenture for the Relevant Convertible Securities for such Conversion Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the "Specified Dollar Amount" (as defined in the Indenture) and (iv) the first "Scheduled Trading Day" (as defined in the Indenture) of the relevant "Observation Period" (as defined in the Indenture), if any; *provided* that in the case of any exercise of Options in connection with the conversion of any Relevant Convertible Securities for any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clauses (i) and (ii) above; *provided, further,* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutatis mutandis*, to this Confirmation. Counterparty acknowledges its responsibilities under applicable securities laws, and

in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities. For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure. If applicable, the Notice of Exercise shall also contain the Settlement Method Election Provisions.

Notice of Final Convertible Security Settlement Method:	Counterparty shall notify Dealer in writing of the final settlement method (and, if applicable, the final Specified Dollar Amount) elected (or the default settlement method that applies pursuant to Section 4.03(a)(i) of the Indenture) with respect to the Convertible Securities before 5:00 P.M. (New York City time) on the earlier to occur of (x) the date on which it makes the irrevocable election of a settlement method in accordance with Section 8.01(l) of the Indenture and (y) September 15, 2023. If applicable, the Notice of Final convertible Security Settlement Method shall also contain the Settlement Method Election Provisions.
Dealer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:	As specified in Section 6(b) below.

Settlement Terms:

Settlement Date:	For any Exercise Date, the settlement date for the cash (if any) and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities for the relevant Conversion Date under the terms of the Indenture; *provided* that the Settlement Date shall not be prior to the latest of (i) the date one Settlement Cycle following the final day of the relevant Cash Settlement Averaging Period, (ii) the Exchange Business Day immediately following the date on which Counterparty gives notice to Dealer of such Settlement Date prior to 5:00 P.M., New York City time, or (iii) the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 P.M., New York City time.
Delivery Obligation:	In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to "Notice of Exercise" above, in respect of an Exercise Date, Dealer will deliver to Counterparty on the related Settlement Date (the "**Delivery Obligation**"): (i) (I) the product of the Applicable Percentage

and a number of Shares equal to the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(C) of the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture and shall be rounded down to the nearest whole number) and (II) cash in lieu of any fractional Share resulting from such rounding; and/or

(ii) cash equal to the product of the Applicable Percentage and the excess of (I) the "Daily Principal Portion" (as defined in the Indenture) over (II) USD1,000 *divided by* 60, for each "VWAP Trading Day" (as defined in the Indenture) during the relevant Cash Settlement Averaging Period per Convertible Security (in denominations of USD1,000) that Counterparty would be obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date pursuant to Section 4.03(a)(ii)(B) or 4.03(a)(ii)(C) of the Indenture, as applicable;

for each of clauses (i) and (ii), determined as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Relevant Convertible Securities (collectively, the "**Convertible Obligation**"); *provided* that (i) if the "Daily VWAP" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) during any Cash Settlement Averaging Period is equal to or greater than the Cap Price, then clause (ii) of the relevant Daily Conversion Value for such VWAP Trading Day shall be determined as if such Daily VWAP for such VWAP Trading Day were deemed to equal the Cap Price and (ii) for the avoidance of doubt, the Delivery Obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date. Notwithstanding the foregoing, in all events

the Delivery Obligation shall be capped so that the value of (x)(I) the number of Shares comprising the Delivery Obligation *multiplied by* the Share

Obligation Value Price *plus* (II) the amount of cash comprising the Delivery Obligation, does not exceed (y) the relevant Net Convertible Share Obligation Value. For the avoidance of doubt, if the "Daily Conversion Value" (as defined in the Indenture) for any "VWAP Trading Day" (as defined in the Indenture) occurring in the relevant Cash Settlement Averaging Period is less than or equal to USD1000.00 *divided by* 60, Dealer will have no delivery obligation hereunder in respect of such VWAP Trading Day.

Convertible Security Settlement Method:

For any Relevant Convertible Securities, if (i) Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 4.03(a)(i) of the Indenture with a Specified Dollar Amount of at least USD1,000 (a "**Cash Election**") and (ii) such Notice of Exercise (or such Notice of Final Convertible Security Settlement Method, as the case may be) contains all of the Settlement Method Election Provisions, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall assume Counterparty had made a Cash Election with respect to such Relevant Convertible Securities with a Specified Dollar Amount of USD1,000 per Relevant Convertible Security (the Observation Period applicable to such settlement method, the "**Cash Settlement Averaging Period**" for such Relevant Convertible Securities).

Settlement Method Election Provisions:

In order for the Convertible Security Settlement Method to be the settlement method actually elected by Counterparty under the Indenture in respect of the applicable Relevant Convertible Securities in accordance with "Convertible Security Settlement Method" above, the related Notice of Exercise (or Notice of Final Convertible Security Settlement Method, as the case may be) must contain in writing the following representations, warranties and acknowledgments from Counterparty to Dealer as of such notice delivery date (except that such representations, warranties and acknowledgments will not be required in the case where the Relevant Convertible Securities will be settled by Counterparty by delivery of a combination of cash and Shares with a Specified Dollar Amount equal to USD1,000 where Counterparty has either (x) failed to elect a settlement method under the Indenture in respect of the applicable Relevant Convertible Securities so that

Counterparty is deemed to have elected such settlement method by default pursuant to Section 4.03(a)(i) of the Indenture or (y) merely confirmed such deemed election of the default settlement method pursuant to Section 4.03(a)(i) of the Indenture):

(i) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares;

(ii) Counterparty is electing the Convertible Security Settlement Method in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing the settlement method under the Indenture for the Relevant Convertible Securities or the Convertible Security Settlement Method to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction within the meaning of Rule 10b5-1(c) under the Exchange Act;

(iii) Counterparty has the power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary action to authorize such election, execution, delivery and performance;

(iv) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(v) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of

business on the final day of the Cash Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how,

when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Notice of Delivery Obligation: No later than the Exchange Business Day immediately following the last day of the relevant Cash Settlement Averaging Period, Counterparty shall give Dealer notice of the final number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer, within the time period set forth above, with a single notice of the aggregate number of Shares and/or amount of cash comprising the settlement obligation under the Indenture in respect of the Relevant Convertible Securities for all Exercise Dates occurring during such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to a Notice of Exercise or Notice of Convertible Security Settlement Method, as the case may be, as set forth above, in any way).

Net Convertible Share Obligation Value: With respect to Relevant Convertible Securities as to a Conversion Date, the product of (x) the Applicable Percentage and (y) difference of (i) the Total Convertible Share Obligation Value of such Relevant Convertible Securities for such Conversion Date *minus* (ii) the aggregate principal amount of such Relevant Convertible Securities for such Conversion Date.

Total Convertible Share Obligation Value: With respect to Relevant Convertible Securities with respect to a Conversion Date, (i) (A) the number of Shares equal to the aggregate number of Shares that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture (except that such number of Shares shall be determined without taking into consideration any rounding pursuant to Section 4.03(b) of the Indenture) *multiplied by* (B) the Share Obligation Value Price *plus* (ii) an amount equal to (A) the fractional Shares, if any, that would have resulted but for the rounding under (i)(A) above *multiplied by* (B) the Share Obligation Value Price *plus* (iii) an amount of cash equal to the aggregate amount of cash that Counterparty is obligated to deliver to the holder(s) of Relevant Convertible Securities for such Conversion Date pursuant to the Indenture; *provided*

that, the Total Convertible Share Obligation Value shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a direct or indirect result of any adjustments to the Conversion Rate pursuant to a Discretionary Adjustment and any interest payment that Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date.

Share Obligation Value Price: The opening price as displayed under the heading "Op" on Bloomberg page "FOLD.Q <Equity>" (or any successor thereto) on the applicable Settlement Date.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Adjustments:

Method of Adjustment: Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Section 4.04(a) through (e) of the Indenture that the Calculation Agent determines would result in an adjustment under the Indenture by reference to such Section thereof (an "**Adjustment Event**"), the Calculation Agent shall make the corresponding adjustment in respect of any one or more of the Strike Price, the Number of

Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction, subject to "Discretionary Adjustments" below (other than the Cap Price), to the extent an analogous adjustment would be made under the Indenture, and (ii) upon the occurrence of any Adjustment Event and/or any Potential Adjustment Event, the Calculation Agent shall determine the economic effect of such Adjustment Event and/or

Potential Adjustment Event and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make any further adjustment to the Cap Price consistent with the "Calculation Agent Adjustment" set forth in Section 11.2(c) of the Equity Definitions (as modified hereby) to preserve the fair value of the Transaction after taking into account such Adjustment Event and/or Potential Adjustment Event; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price. As soon as reasonably practicable upon the occurrence of any Adjustment Event, Counterparty shall notify the Calculation Agent of such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall as soon as reasonably practicable notify the Calculation Agent in writing of the details of such adjustments.

In addition, the Calculation Agent shall, to the extent the Calculation Agent determines practicable, make a corresponding adjustment to the settlement terms of the Options (but without duplication of any adjustment pursuant to the foregoing paragraph) to the extent an analogous adjustment would be made pursuant to Section 4.05(a) of the Indenture; *provided* that the Calculation Agent may limit or alter any such adjustment referenced in this sentence so that the fair value of the Transaction is not reduced as a result of such adjustment. For the avoidance of doubt, Dealer shall not have any delivery obligation hereunder in respect of any "Distributed Property" delivered by Counterparty pursuant to the second sentence of Section 4.04(c) of the Indenture or any payment obligation in respect of any cash paid by Counterparty pursuant to the second sentence of Section 4.04(d) of the Indenture (collectively, the "**Dilution Adjustment Fallback Provisions**"), and no adjustment shall be made to the terms of the Transaction (other than, if applicable pursuant to the preceding paragraph, the Cap Price) on account of any event or condition described in the Dilution Adjustment Fallback Provisions.

Discretionary Adjustments: Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith disagrees with any adjustment under the Indenture that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 4.05(a) of the Indenture or pursuant to Section 4.07(a) of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional

adjustment or the determination of the fair value of any securities, property, rights or other assets), then the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of the Transaction in a commercially reasonable manner.

Extraordinary Events:

Merger Events: Notwithstanding Section 12.1(b) of the Equity Definitions, except to the extent set forth under the provisions set forth under "Consequences of Announcement Events" and "Announcement Event" below, a "Merger Event" means the occurrence of any event or condition set forth in Section 4.07(a) of the Indenture.

Consequences of Merger Events/ Tender Offers: Notwithstanding Section 12.2 of the Equity Definitions, (i) upon the occurrence of a Merger Event that the Calculation Agent determines by reference to Section 4.07(a) of the Indenture would result in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in respect of any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to a Fundamental Change Adjustment or a Discretionary Adjustment; and *provided further* that the Calculation Agent may limit or alter any such adjustment referenced in this clause (i) so that the fair value of the Transaction is not reduced as a result of such adjustment; and *provided further* that if, with respect to a Merger Event, (x) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any state thereof or the District of Columbia or (y) the Counterparty to the Transaction following such Merger Event will not be

a corporation organized under the laws of the United States, any state thereof or the District of Columbia and/or will not be the Issuer or a wholly-owned subsidiary of Issuer whose obligations hereunder are fully and unconditionally guaranteed by Issuer following such Merger Event, in either case, Cancellation and Payment (Calculation Agent Determination) shall apply; and (ii) upon the occurrence of a Merger Event, a "Merger Event" (as defined in the Equity Definitions) and/or a Tender Offer, the Calculation Agent shall determine the

economic effect of such Merger Event, "Merger Event" (as defined in the Equity Definitions) and/or Tender Offer and, if the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines that such economic effect is material, shall, but without duplication of any adjustment pursuant to clause (i) above, make such further adjustments to the Cap Price to preserve the fair value of the Transaction; provided that the Cap Price shall not be adjusted so that it is less than the Strike Price.

Notice of Merger Consideration and Consequences: Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but in any event prior to the relevant merger date) notify the Calculation Agent of (i) the type and amount of consideration that a holder of Shares would have been entitled to in the case of reclassifications, consolidations, mergers, sales or transfers of assets or other transactions that cause Shares to be converted into the right to receive more than a single type of consideration, (ii) if holders of Shares affirmatively make such an election, the weighted average of the types and amounts of consideration to be received by the holders of Shares that affirmatively make such an election, and (iii) the details of the adjustment to be made under the Indenture in respect of such Merger Event.

Consequences of Announcement Event: Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that, in respect of an Announcement Event, references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event"; provided further that, in respect of an Announcement Event, Section 12.3(d)(i)(A) of the Equity Definitions shall be amended by replacing the words "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" with "Cap Price". An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event: (i) The public announcement (x) by Issuer or any of its affiliates of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that, if

completed, would constitute a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or (y) by a party to the relevant proposed transaction or its affiliate of any Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer, the intention to enter into a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer or any transaction or event that in the commercially reasonable determination of the Calculation Agent is likely to lead to a Merger Event, "Merger Event" (as defined in the Equity Definitions) or Tender Offer (it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares or options relating to the Shares and such other factors as the Calculation Agent deems relevant in its commercially reasonable determination), (ii) the public announcement by Issuer or any of its subsidiaries of any acquisition where the aggregate consideration exceeds 25% of the market capitalization of Issuer as of the date of such announcement (an "**Acquisition Transaction**") that the Calculation Agent, acting in good faith and in a commercially reasonable manner, determines has a material economic effect on the fair value of the Transaction (it being understood that the events referred to in Section 11.2(e)(vii) of the Equity Definitions, as amended hereby, will exclude the public announcement by the Issuer or any of its subsidiaries of any acquisition where the aggregate consideration is equal to or less than 25% of the market capitalization of the Issuer as of the date of such announcement), (iii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event, "Merger Event" (as defined in the Equity Definitions), Tender Offer and/or Acquisition Transaction or (iv) any subsequent public announcement of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i), (ii) or (iii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention) (in each case, whether such announcement is made by Issuer or a third party); *provided* that, for

the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention.

Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE MKT, The NASDAQ Global Select Market or The NASDAQ Global Market or the NASDAQ Capital Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Termination Event(s):	Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, any Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction(s) (or portions thereof) being the Affected Transaction(s) and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction(s).
Additional Disruption Events:	
(a) Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date"; *provided, further* that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, and (ii) Section 12.9(a)(ii) of the Equity

	Definitions is hereby amended by replacing the parenthetical beginning after the word "regulation" in the second line thereof the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)".
(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Hedging Disruption:	Applicable; *provided* that: (i) Section 12.9(a)(v) of the Equity Definitions is hereby modified by: (a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date"; (b) inserting the following two phrases at the end of such Section: "For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, the transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing and other terms."; (ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by replacing, in the third line thereof, the words "to terminate the Transaction", with the words " to terminate (x) the Transaction or (y) a portion of the Transaction affected by such Hedging Disruption (with such election between the immediately preceding clauses (x) and (y) made by the Hedging Party in its commercially reasonable discretion)".
(e) Increased Cost of Hedging:	Not Applicable

Hedging Party:	Dealer
Determining Party:	Dealer
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

3. Calculation Agent: Dealer; *provided* that following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five (5) Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate an independent, nationally recognized equity derivatives dealer to replace Dealer as Calculation Agent over the period during which such Event of Default has occurred and is continuing, and the parties hereto shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent.

Following any determination, adjustment or calculation by the Calculation Agent, the Calculation Agent shall, upon request from Counterparty, promptly provide Counterparty with a written report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (but without disclosing Dealer's confidential or proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

4. Account Details:

Dealer Payment Instructions:

To be provided by Dealer.

Counterparty Payment Instructions:

To be provided by Counterparty.

5. Offices:

The Office of Dealer for the Transaction is:

New York

Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281
Attention: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053

The Office of Counterparty for the Transaction is:

Not Applicable.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

To: Amicus Therapeutics, Inc.
1 Cedar Brook Drive
Cranbury, NJ 08512

Attn: Chip Baird

Chief Financial Officer
Telephone: 609-662-5022
Email: cbaird@amicusrx.com

With a copy to:

Attn: Ellen Rosenberg
General Counsel
Telephone: 609-662-5019
Email: erosenberg@amicusrx.com

(b) Address for notices or communications to Dealer:

To: Royal Bank of Canada
c/o RBC Capital Markets, LLC
3 World Financial Center
200 Vesey Street
New York, New York 10281

Attn: Structured Derivatives Documentation
Telephone: (212) 858-7000
Facsimile: (212) 428-3053
Email: SEDDOC@rbccm.com

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date and as of the date of any election by Counterparty of the Share Termination Alternative under (and as defined in) Section 8(c) below, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (y) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.

(iii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements).

(iv) As of the Trade Date (or at any time during the ten business day period immediately preceding the Trade Date), Counterparty and its affiliates have not announced or been engaged in an "issuer tender offer" as such term is defined in Rule 13e-4 under the Exchange Act, nor is it aware of any third party tender offer with respect to the Shares within the meaning of Rule 13e-1 under the Exchange Act.

(v) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction. Based on such resolutions, neither Dealer nor any of its affiliates shall be subject to the restrictions under Section 203 of the Delaware General Corporation Law as an "interested stockholder" of Counterparty by virtue of (A) its role as initial purchaser of, or market-maker in, the Convertible Securities, (B) its entry into the Transaction and/or (C) any hedging transactions in Counterparty's securities in connection with the Transaction.

(vi) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(viii) On each of the Trade Date and the Premium Payment Date, Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and Counterparty would be able to purchase the Number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation.

(ix) [Reserved]

(x) To Counterparty's knowledge, no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to

obtain prior approval from any person or entity) (in each case, excluding requirements under U.S. federal securities laws generally applicable to ownership of shares of common stock listed on the Exchange) as a result of Dealer or its affiliates owning or holding (however defined) Shares.

(xi) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including, without limitation, the transaction that is the subject of this confirmation and any transactions related hereto or contemplated hereby; (B) will exercise independent judgment in evaluating the recommendations of Dealer and its affiliates or associated persons with regard to any such securities transactions or strategies unless it has otherwise notified Dealer in writing; and (C) has total assets of at least $50 million. Counterparty will notify Dealer if the immediately preceding statement contained in this Section 7(a)(xi) ceases to be true.

(xii) Without limiting the generality of Section 3(a) of the Agreement, neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or

any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2015, as updated by any subsequent filings, to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in the U.S. Commodity Exchange Act, as amended, and is entering into the Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise) and not for the benefit of any third party.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer (i) an incumbency certificate, dated as of the Effective Date, of Counterparty in customary form and (ii) an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Sections 7(a)(vii) and 7(a)(xii) hereof.

(f) Counterparty understands that notwithstanding any other relationship between Counterparty and Dealer and its affiliates, in connection with this Transaction and any other over-the-counter derivative transactions between Counterparty and Dealer or its affiliates, Dealer or its affiliates is acting as principal and is not a fiduciary or advisor in respect of any such transaction, including any entry, exercise, amendment, unwind or termination thereof.

(g) Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled **"Characteristics and Risks of Standardized Options"**.

(h) Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(i) Counterparty represents and warrants that the assets used in the Transaction (i) are not assets of any "plan" (as such term is defined in Section 4975 of the U.S. Internal Revenue Code (the "**Code**")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")) subject to Title I of ERISA, and (ii) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.

(j) On the Trade Date, neither Issuer nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) of Issuer shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest,

including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

8. Other Provisions:

(a) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the Delivery Obligation), if Dealer determines, in its reasonable discretion, based on the advice of counsel in the case of clause (ii) below, that such extension or addition is reasonably necessary or appropriate (i) to maintain or unwind a commercially reasonable Hedge Position in light of existing liquidity conditions in the cash market, the stock borrow market or other relevant market (but only if the Calculation Agent determines that there is a material decrease in liquidity relative to Dealer's expectations as of the Trade Date) or (ii) to enable Dealer to effect transactions with respect to Shares or Share Termination Delivery Units in connection with maintaining or unwinding a commercially reasonable Hedge Position in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner.

(b) *Additional Termination Events*.

(i) The occurrence of (A) an event of default with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 6.01 of the Indenture that results in the Convertible Securities becoming or being declared due and payable pursuant to the terms of the Indenture, (B) an Amendment Event, or (C) Dealer's receipt of notice from Counterparty, within the time period set forth under "Notice of Exercise" above (*provided* that, such notice shall be effective for purposes of this Section 8(b)(i)(C) if given after the Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Notice Deadline, it being understood that in determining the related Excluded Conversion Unwind Payment, Dealer may take into account, in a commercially reasonable manner, any additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline), of a Notice of Exercise in respect of an Excluded Conversion Event, in each case, shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that in the case of an Excluded Conversion Event the Transaction shall be subject to termination only in respect of a number of Options (the

"**Affected Number of Options**"), equal to the lesser of (1) the number of Convertible Securities that cease to be outstanding in connection with or as a result of such Excluded Conversion Event *minus* the "Affected Number of Options" (as defined in the Base Capped Call Transaction Confirmation), if any, that relate to such Excluded Conversion Event (and, for the purposes of determining whether any Options under this Confirmation or under the Base Capped Call Transaction Confirmation will be among the Affected Number of Options hereunder or among the "Affected Number of Options" under, and as defined in, the Base Capped Call Transaction Confirmation, the Affected Number of Options shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated), and (2) the number of Options then outstanding; *provided*, *further* that in the case of an Excluded Conversion Event, the amount payable pursuant to Section 6 of the Agreement with respect to the related Affected Number of Options shall be subject to a cap equal to the amount of the Net Convertible Share Obligation Value that would apply with respect to such Affected Number of Options if (I) the number of Excluded Convertible Securities related to such Affected Number of Options were the "Relevant Convertible Securities", (II) the "Conversion Date" (as defined in the Indenture) with respect to such Excluded Convertible Securities were the "Conversion Date", and (III) the date of payment with respect to such Early Termination Date were the "Settlement Date". For the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement in connection with an Excluded Conversion Event (such amount, the "**Excluded Conversion Unwind Payment**"), the Calculation Agent shall assume (x) that the relevant Excluded Convertible Securities shall not have been converted and remain outstanding, (y) in the case of an Induced Conversion, that any adjustments, agreements, additional payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty in connection therewith had not occurred and (z) except for purposes of determining the cap applicable to such amount as described in the second proviso to the immediately preceding sentence, that no holders of Convertible Securities were entitled to receive any additional Shares pursuant to a Fundamental Change Adjustment, if any. Counterparty shall notify Dealer promptly following the occurrence of any Excluded Conversion Event.

If Counterparty has notified, or deemed to have notified, Dealer, in accordance with the requirements set forth herein, in the applicable Notice of Exercise (or in the Notice of Final Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares, then in lieu of paying the Excluded Conversion Unwind Payment entirely in cash, Dealer shall pay and/or deliver to Counterparty, on the date such Excluded Conversion Unwind Payment would otherwise be due (or within a commercially reasonable period of time thereafter, as determined by Dealer taking into account existing liquidity conditions and Dealer's commercially reasonable hedging and hedge unwind activity or settlement activity in connection with delivery) (A) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities entirely in Shares or in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) equal to or less than USD 1,000, a number of Shares equal to the quotient of (x) the amount of such Excluded Conversion Unwind Payment *divided by* (y) a market price per Share (which market price per Share may, but is not required to, correspond to the "Daily VWAP" over the "Observation Period" (each as defined in the Indenture), if applicable, with respect to the Excluded Convertible Securities) (the "**Market Price**") determined by the Calculation Agent or (B) in the case where Counterparty has elected to satisfy its conversion obligation in respect of the related Excluded Convertible Securities in a combination of cash and Shares with a "Specified Dollar Amount" (as defined in the Indenture) greater than USD 1,000, (x) an amount of cash equal to the lesser of (1) the amount of such Excluded Conversion Unwind Payment and (2) the product of (I) the Applicable Percentage, (II) the excess of such "Specified Dollar Amount" (as defined in the Indenture) over USD 1,000 and (III) the Affected Number of Options and (y) if the amount of such Excluded Conversion Unwind Payment exceeds the amount of cash calculated pursuant to the immediately preceding clause (B)(x)(2), a number of Shares equal to the quotient of (x) the amount of such excess *divided by* (y) the Market Price. Notwithstanding anything to the contrary herein, any payment calculated pursuant to Section 8(b)(i)(C) in respect of an Excluded

Conversion Event shall not be a "Payment Obligation" to which the Share Termination Alternative provisions of Section 8(c) below apply; *provided* that, for the avoidance of doubt, in the case of a payment or delivery pursuant to Section 8(b)(i)(C) following an Extraordinary Event, the Calculation Agent may adjust the composition of the Shares as appropriate to reflect the composition of consideration received by holders of Shares in such Extraordinary Event (as determined in a manner consistent with the provisions opposite the caption "Share Termination Delivery Unit" below) and the provisions opposite the caption "Other Applicable Provisions" below shall apply.

"**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Securities governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, absence of redemption right of Counterparty, any term relating to conversion of the Convertible Securities (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Securities to amend, in each case without the prior consent of Dealer (but excluding, for the avoidance of doubt, any amendment, modification or supplement (x) pursuant to Section 8.01(b) of the Indenture that conforms the Indenture to the description of Convertible Securities in the Preliminary Offering Circular dated December 14, 2016, as supplemented by the related pricing term sheet, as determined by the Calculation Agent, or (y) that is required to be made pursuant to Section 4.07(a) of the Indenture).

"**Excluded Conversion Event**" means any conversion of Convertible Securities with a "Conversion Date" (as defined in the Indenture) occurring prior to the 65th Scheduled Trading Day prior to the Maturity Date.

"**Induced Conversion**" means a conversion of any Excluded Convertible Securities (A) in connection with (x) an adjustment to the Conversion Rate effected by Counterparty (whether any Discretionary Adjustment or otherwise) that is not required under the terms of the Indenture or (y) an agreement by Counterparty with the holder(s) of such Convertible Securities whereby, in the case of either (x) or (y), the holder(s) of such Convertible Securities receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or item of value that was not required under the terms of the Indenture or (B) after having been acquired from a holder of Convertible Securities by or on behalf of Counterparty or any of its affiliates other than pursuant to a conversion by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty.

(ii) (1) Within 5 Scheduled Trading Days following settlement of any Repayment Event (as defined below), Counterparty may notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (the "**Repayment Convertible Securities**") (any such notice, a "**Repayment Notice**"); *provided* that any "Repayment Notice" delivered to Dealer pursuant to the Base Capped Call Transaction Confirmation shall deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such Repayment Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 8(b)(ii). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a Repayment Event, including, without limitation, the delivery of a Repayment Notice.

(2) Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the relevant Repayment Event and correspond to a payment date pursuant to Section 6(d)(ii) of the Agreement that occurs as promptly as commercially reasonable thereafter) as an Early Termination Date with respect to a portion (the "**Repayment Terminated Portion**") of the Transaction consisting of a number of Options (the "**Repayment Options**") equal to the lesser of

(A) the number of Repayment Convertible Securities in denominations of USD1,000 that are subject to the relevant Repayment Event (and for the purposes of determining whether any Convertible Securities will be Repayment Convertible Securities hereunder or under, and as defined in, the Base Capped Call Transaction Confirmation, Convertible Securities that are subject to a Repayment Event shall be allocated first to the Base Capped Call Transaction Confirmation until all Options thereunder are exercised or terminated) and (B) the Number of Options as of the date Dealer designates such Early Termination Date, and as of such date, the Number of Options shall be reduced by the number of Repayment Options.

(3) Any payment or delivery in respect of such termination of the Repayment Terminated Portion of the Transaction shall be made pursuant to Section 6 of the Agreement and, if applicable, Section 8(c) of this Confirmation. Counterparty shall be the sole Affected Party with respect to such Additional Termination Event and the Repayment Terminated Portion of the Transaction shall be the sole Affected Transaction. "**Repayment Event**" means that (i) any Convertible Securities are repurchased by Counterparty or any of its subsidiaries (including in connection with, or as a result of, a Fundamental Change, a tender offer, exchange offer or similar transaction or for any other reason), (ii) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), (iii) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (other than upon acceleration of the Convertible Securities described in Section 8(b)(i) of the Confirmation), or (iv) any Convertible Securities are exchanged by or for the benefit of the Holders (as defined in the Indenture) thereof for any other securities of Counterparty or any of its Affiliates (as defined in the Indenture) (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; provided that no conversion of Convertible Securities pursuant to the terms of the Indenture shall constitute a Repayment Event.

(4) Counterparty shall cause any Convertible Securities subject to a Repayment Event to be promptly cancelled and acknowledges and agrees that, except to the extent provided above in this Section 8(b)(ii), all such Convertible Securities subject to a Repayment Event will be deemed for all purposes under the Transaction to be permanently extinguished and no longer outstanding.

(c) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions or "Consequences of Merger Events/Tender Offers" above, or Section 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable ("**Notice of Share Termination**");

provided that if Counterparty does not elect to require Dealer to satisfy its Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's failure to elect or election to the contrary; and *provided further* that Counterparty shall not have the right to so elect (but, for the avoidance of doubt, Dealer shall have the right to so elect) in the event (i) of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty's control or (iii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) as of the date of such election. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.2, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other Applicable Provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10 and 9.11 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Share Termination Delivery Units (or any part thereof).

(d) *Disposition of Hedge Shares*. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on advice of counsel, the Shares (the "**Hedge Shares**") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering of equity securities of similar size, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities of similar size,

(C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities of similar size and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Counterparty elects clause (i) above but the items referred to therein are not completed in a timely manner, or if Dealer, in its sole commercially reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 8(d) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the "Daily VWAP" (as defined in the Indenture) on such Exchange Business Days, and in the amounts, requested by Dealer. This Section 8(d) shall survive the termination, expiration or early unwind of the Transaction.

(e) *Repurchase and Conversion Rate Adjustment Notices*. Counterparty shall, prior to 9:00 a.m., New York City time, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise engages in any transaction or event that could reasonably be expected to lead to an increase in the Conversion Rate (a "**Conversion Rate Adjustment Event**"), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a "**Repurchase Notice**") on such day if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage would reasonably be expected to be (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Notice Percentage as of the date hereof), and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material nonpublic information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(e) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (including losses relating to the Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act or under any state or federal law, regulation or regulatory order, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable, out-of-pocket expenses (including reasonable, out-of-pocket counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any

assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(f) *Transfer and Assignment*. Either party may transfer or assign any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed; *provided* that Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to (i) any affiliate of Dealer or (ii) any person, or any person whose obligations would be guaranteed by a person, in either case, of credit quality equivalent to Dealer's (or its guarantor's); *provided further* that it shall be a condition to a transfer or assignment by Dealer without Counterparty's consent that, as determined by Dealer in good faith, (x) as of the date of such transfer or assignment, and giving effect thereto, Counterparty will not be required (or, as determined by Dealer in good faith, reasonably expected) to pay the transferee, assignee or Dealer on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (y) as of the date of such transfer or assignment, and giving effect thereto, the transferee or assignee will not be required to withhold or deduct on account of Tax from any payments under the Agreement or will be required to gross up for such Tax under Section 2(d)(i)(4) of the Agreement. If at any time at which (1) the Equity Percentage exceeds 8.0%, (2) the Option Equity Percentage exceeds 14.5% or (3) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Section 203 of the Delaware General Corporation Law or other federal, state or local law, rule, regulation or regulatory order or organizational documents or contracts of Counterparty applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Restrictions and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares outstanding on the date of determination (either such condition described in clause (1), (2) or (3), an "**Excess Ownership Position**"), Dealer, in its discretion, is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing and terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(c) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty were the sole Affected Party with respect to such partial termination, (iii) such portion of the Transaction were the only Terminated Transaction and (iv) Dealer were the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. The "**Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "**Dealer Group**") "beneficially own" (within the meaning of Section 13 of the Exchange Act) without duplication on such day and (B) the denominator of which is the number of Shares outstanding on such day. In the case of a transfer or assignment by Counterparty of its rights and obligations hereunder and under the Agreement, in whole or in part (any such Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet the reasonable conditions that Dealer may impose including, but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 8(e) or any obligations under Section 2 (regarding Extraordinary Events) or 8(d) of this Confirmation;

(B) Any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended);

(C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty as are requested and reasonably satisfactory to Dealer;

(D) Dealer will not, as a result of such transfer and assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Dealer would have been required to pay to Counterparty in the absence of such transfer and assignment;

(E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer and assignment;

(F) Without limiting the generality of clause (B), Counterparty shall have caused the transferee to make such Payee Tax Representations and to provide such tax or other documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer and assignment; and

(G) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(g) *Staggered Settlement*. Dealer may, by notice to Counterparty prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on one or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the earlier of the relevant Conversion Date and the first day of the relevant Cash Settlement Averaging Period) or delivery times and how it will allocate the Shares it is required to deliver under "Delivery Obligation" (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(h) *Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(i) *No Netting or Set-off.* The provisions of Section 2(c) of the Agreement shall not apply to the Transaction. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party under any other agreement between the parties hereto, by operation of law or otherwise.

(j) *Equity Rights*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a

result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that the obligations of Counterparty under this Confirmation are not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(k) *Early Unwind*. In the event the sale by Counterparty of the Optional Securities (as defined in the Purchase Agreement) is not consummated pursuant to the Purchase Agreement for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to the first sentence of Section 7(e), in each case by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (the Premium Payment Date or such later date being the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty hereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from, and agrees not to make any claim against the other party with respect to, any obligations or liabilities of either party arising out of, and to be performed in connection with, the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(l) *Wall Street Transparency and Accountability Act of 2010*. The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from a Change in Law, a Failure to Deliver, a Hedging Disruption, an Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(m) *Payment by Counterparty*. In the event that, following the payment of the Premium hereunder by counterparty, an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, such amount shall be deemed to be zero.

(n) *Governing Law*. **THE AGREEMENT, THIS CONFIRMATION AND ALL MATTERS ARISING IN CONNECTION WITH THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH,**

THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CHOICE OF LAW DOCTRINE, OTHER THAN TITLE 14 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(o) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Counterparty and Dealer.

(p) *Counterparts*. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(q) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(r) *Tax Matters*.

(i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any withholding tax imposed or

collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement.

(ii) HIRE Act. "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.

(iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Dealer and (iii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer. Dealer shall provide to Counterparty a valid U.S. Internal Revenue Service Form W-8ECI, or any successor thereto, (i) on or before the date of execution of this Confirmation, (ii) upon reasonable request of Counterparty and (iii) promptly upon learning that any such tax form previously provided by Dealer has become obsolete or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents reasonably requested by Counterparty.

(iv) Tax Representations. Counterparty represents to Dealer that for U.S. federal income tax purposes it is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) and an "exempt recipient" (as that term is used in section 1.6049-4(c)(1) of the United States Treasury Regulations). Dealer represents to Counterparty that for U.S. federal income tax purposes it is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations for United States federal income tax purposes).

(s) *Amendment to Equity Definitions*. The following amendments shall be made to the Equity Definitions:

(i) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word "or" after the word "official" and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor "or (C) at Dealer's option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer."

(ii) solely in respect of adjustments to the Cap Price: the first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: '(c) If "Calculation Agent Adjustment" is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:' and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words "diluting or concentrative" and the words "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing such latter phrase with the words "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)";

(iii) solely in respect of adjustments to the Cap Price: Sections 11.2(a) and 11.2(e)(vii) of the Equity Definitions are hereby amended by deleting the words "diluting or concentrative" and replacing them with "material economic" and adding the words "or options on the Shares, as a result of, or in connection with, a direct or indirect action by Counterparty and/or its subsidiaries (including any action in concert with, or consented to by, Counterparty and/or its subsidiaries)" at the end of the sentence; and

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(t) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(u) Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Daily VWAP; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Daily VWAP, each in a manner that may be adverse to Counterparty.

(w) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(x) *Role of Agent.* Dealer has appointed, as its agent, its indirect wholly-owned subsidiary, RBC Capital Markets, LLC ("**RBCCM**"), for purposes of conducting, on Dealer's behalf, a business in privately negotiated transactions in options and other derivatives. Counterparty hereby is advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized RBCCM to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products. RBCCM does not act as agent of Counterparty. For the avoidance of doubt, any performance by Dealer of its obligations hereunder solely to RBCCM shall not relieve Dealer of such obligations. RBCCM's performance to Counterparty of Dealer's obligations hereunder shall relieve Dealer of such obligations to the extent of such performance. Any performance by Counterparty of its obligations (including notice obligations) through or by means of RBCCM's agency for Dealer shall constitute good performance of Counterparty's obligations hereunder to Dealer.

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

ROYAL BANK OF CANADA
by its agent
RBC Capital Markets, LLC

By: s/Makoné Touré
Name: Makoné Touré
Title: Associate Director

Agreed and Accepted By:

AMICUS THERAPEUTICS, INC.

By: s/William D. Baird III
Name: William D. Baird III
Title: CFO

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among P Redmile Ltd. (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Notes. On the terms and conditions set forth herein, Purchaser agrees to purchases from Seller and Seller agrees to sell to Purchaser each of the notes issued by Amicus International and described on Exhibit A hereto (the "**Purchased Notes**") at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**").

2. Payment and Closing. As promptly as practicable following the closing of the Purchaser's issuance of a new series of convertible senior notes, as contemplated by that certain Notice of Repurchase, dated December 15, 2016, sent by the Purchaser and Amicus International and acknowledged by the Seller, Purchaser shall pay the Purchase Price for the Purchased Notes in cash, by cashier's check or by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser each of the Purchased Notes, with such instruments of transfer or assignment as are reasonably necessary to effect the transfer.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns all Purchased Notes free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of such Purchased Notes or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Notes.

(b) Seller has full power and authority to sell and transfer the Purchased Notes to Purchaser without obtaining the waiver, consent, order or approval of (i) except as has otherwise been obtained or as otherwise provided for in this Agreement, Amicus International, (ii) any state or federal governmental authority, or (iii) any third party or other person.

(c) The execution and delivery of this Agreement by such Seller and the performance by Seller of his, her, or its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or such Seller's charter documents, nor, to such Seller's knowledge, result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the Purchased Notes, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Notes as herein contemplated, Seller will convey to Purchaser good, valid and marketable title to the Purchased Notes free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is not relying on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Consent to Transfer.

(a) Pursuant to Section 13(a) of each Purchased Note, Amicus International hereby consents to the transfer of the Purchased Notes contemplated by this Agreement and waives receipt of a written assignment for such transfer. The consent of Amicus International provided herein shall not be construed as a waiver, release, or relinquishment by Amicus International of any of Amicus International's rights and privileges under the Purchased Notes.

5. Miscellaneous.

(a) Undertaking. The parties hereby agree to take whatever additional actions and execute whatever additional documents may be necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith. Each party may rely on such mailing address or email address for all purposes in connection with the ownership of the Purchased Notes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

P REDMILE LTD.

/s/ Jeremy Green

By: Jeremy Green
Title: Managing Member of the General Partner
and the Investment Manager

Address: One Letterman Drive
Building D, Suite D3-300
San Francisco, CA 94129
Email: operations@redmilegrp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicuxrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird, III

Print Name: William D. Baird, III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Exhibit A

Note No.	Issue Date	Principal Amount	Amicus Entity	Holder
5	February 19, 2016	$ 10,500,000.00	Amicus Therapeutics International Holding LTD*	P Redmile Ltd.

* Indicates a Note initially issued by Amicus Therapeutics UK Limited that was assigned to Amicus Therapeutics International Holding LTD, pursuant to that certain Assignment and Assumption Agreement, entered into as of June 30, 2016, by and between Amicus Therapeutics UK Limited and Amicus Therapeutics International Holding LTD.

Exhibit 10.8

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among Redmile Capital Offshore Fund, Ltd. (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Notes. On the terms and conditions set forth herein, Purchaser agrees to purchases from Seller and Seller agrees to sell to Purchaser each of the notes issued by Amicus International and described on Exhibit A hereto (the "**Purchased Notes**") at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**").

2. Payment and Closing. As promptly as practicable following the closing of the Purchaser's issuance of a new series of convertible senior notes, as contemplated by that certain Notice of Repurchase, dated December 15, 2016, sent by the Purchaser and Amicus International and acknowledged by the Seller, Purchaser shall pay the Purchase Price for the Purchased Notes in cash, by cashier's check or by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser each of the Purchased Notes, with such instruments of transfer or assignment as are reasonably necessary to effect the transfer.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns all Purchased Notes free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of such Purchased Notes or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Notes.

(b) Seller has full power and authority to sell and transfer the Purchased Notes to Purchaser without obtaining the waiver, consent, order or approval of (i) except as has otherwise been obtained or as otherwise provided for in this Agreement, Amicus International, (ii) any state or federal governmental authority, or (iii) any third party or other person.

(c) The execution and delivery of this Agreement by such Seller and the performance by Seller of his, her, or its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or such Seller's charter documents, nor, to such Seller's knowledge, result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the Purchased Notes, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Notes as herein contemplated, Seller will convey to Purchaser good, valid and marketable title to the Purchased Notes free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is not relying on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Consent to Transfer.

(a) Pursuant to Section 13(a) of each Purchased Note, Amicus International hereby consents to the transfer of the Purchased Notes contemplated by this Agreement and waives receipt of a written assignment for such transfer. The consent of Amicus International provided herein shall not be construed as a waiver, release, or relinquishment by Amicus International of any of Amicus International's rights and privileges under the Purchased Notes.

5. Miscellaneous.

(a) Undertaking. The parties hereby agree to take whatever additional actions and execute whatever additional documents may be necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith. Each party may rely on such mailing address or email address for all purposes in connection with the ownership of the Purchased Notes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

REDMILE CAPITAL OFFSHORE FUND, LTD.

/s/ Jeremy Green

By: Jeremy Green
Title: Managing Member of the General Partner
and the Investment Manager

Address: One Letterman Drive
Building D, Suite D3-300
San Francisco, CA 94129
Email: operations@redmilegrp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicusrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird III

Print Name: William D. Baird III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Exhibit A

Note No.	Issue Date	Principal Amount	Amicus Entity	Holder
2	February 19, 2016	$ 9,498,342.70	Amicus Therapeutics International Holding LTD*	Redmile Capital Offshore Fund, Ltd.

* Indicates a Note initially issued by Amicus Therapeutics UK Limited that was assigned to Amicus Therapeutics International Holding LTD, pursuant to that certain Assignment and Assumption Agreement, entered into as of June 30, 2016, by and between Amicus Therapeutics UK Limited and Amicus Therapeutics International Holding LTD.

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among Redmile Capital Offshore Fund II, Ltd. (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Notes. On the terms and conditions set forth herein, Purchaser agrees to purchases from Seller and Seller agrees to sell to Purchaser each of the notes issued by Amicus International and described on Exhibit A hereto (the "**Purchased Notes**") at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**").

2. Payment and Closing. As promptly as practicable following the closing of the Purchaser's issuance of a new series of convertible senior notes, as contemplated by that certain Notice of Repurchase, dated December 15, 2016, sent by the Purchaser and Amicus International and acknowledged by the Seller, Purchaser shall pay the Purchase Price for the Purchased Notes in cash, by cashier's check or by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser each of the Purchased Notes, with such instruments of transfer or assignment as are reasonably necessary to effect the transfer.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns all Purchased Notes free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of such Purchased Notes or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Notes.

(b) Seller has full power and authority to sell and transfer the Purchased Notes to Purchaser without obtaining the waiver, consent, order or approval of (i) except as has otherwise been obtained or as otherwise provided for in this Agreement, Amicus International, (ii) any state or federal governmental authority, or (iii) any third party or other person.

(c) The execution and delivery of this Agreement by such Seller and the performance by Seller of his, her, or its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or such Seller's charter documents, nor, to such Seller's knowledge, result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the Purchased Notes, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Notes as herein contemplated, Seller will convey to Purchaser good, valid and marketable title to the Purchased Notes free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is not relying on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Consent to Transfer.

(a) Pursuant to Section 13(a) of each Purchased Note, Amicus International hereby consents to the transfer of the Purchased Notes contemplated by this Agreement and waives receipt of a written assignment for such transfer. The consent of Amicus International provided herein shall not be construed as a waiver, release, or relinquishment by Amicus International of any of Amicus International's rights and privileges under the Purchased Notes.

5. Miscellaneous.

(a) Undertaking. The parties hereby agree to take whatever additional actions and execute whatever additional documents may be necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith. Each party may rely on such mailing address or email address for all purposes in connection with the ownership of the Purchased Notes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

REDMILE CAPITAL OFFSHORE FUND II, LTD.

/s/ Jeremy Green
By: Jeremy Green
Title: Managing Member of the General Partner
and the Investment Manager

Address: One Letterman Drive
Building D, Suite D3-300
San Francisco, CA 94129
Email: operations@redmilegrp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicuxrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird, III

Print Name: William D. Baird, III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Exhibit A

Note No.	Issue Date	Principal Amount	Amicus Entity	Holder
3	February 19, 2016	$ 6,960,067.80	Amicus Therapeutics International Holding LTD*	Redmile Capital Offshore Fund II, Ltd.
6	June 30, 2016	$ 5,000,000.00	Amicus Therapeutics International Holding LTD	Redmile Capital Offshore Fund II, Ltd.

* Indicates a Note initially issued by Amicus Therapeutics UK Limited that was assigned to Amicus Therapeutics International Holding LTD, pursuant to that certain Assignment and Assumption Agreement, entered into as of June 30, 2016, by and between Amicus Therapeutics UK Limited and Amicus Therapeutics International Holding LTD.

Exhibit 10.10

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among Redmile Special Opportunities Fund, Ltd. (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Notes. On the terms and conditions set forth herein, Purchaser agrees to purchases from Seller and Seller agrees to sell to Purchaser each of the notes issued by Amicus International and described on Exhibit A hereto (the "**Purchased Notes**") at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**").

2. Payment and Closing. As promptly as practicable following the closing of the Purchaser's issuance of a new series of convertible senior notes, as contemplated by that certain Notice of Repurchase, dated December 15, 2016, sent by the Purchaser and Amicus International and acknowledged by the Seller, Purchaser shall pay the Purchase Price for the Purchased Notes in cash, by cashier's check or by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser each of the Purchased Notes, with such instruments of transfer or assignment as are reasonably necessary to effect the transfer.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns all Purchased Notes free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of such Purchased Notes or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Notes.

(b) Seller has full power and authority to sell and transfer the Purchased Notes to Purchaser without obtaining the waiver, consent, order or approval of (i) except as has otherwise been obtained or as otherwise provided for in this Agreement, Amicus International, (ii) any state or federal governmental authority, or (iii) any third party or other person.

(c) The execution and delivery of this Agreement by such Seller and the performance by Seller of his, her, or its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or such Seller's charter documents, nor, to such Seller's knowledge, result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the Purchased Notes, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Notes as herein contemplated, Seller will convey to Purchaser good, valid and marketable title to the Purchased Notes free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is not relying on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Consent to Transfer.

(a) Pursuant to Section 13(a) of each Purchased Note, Amicus International hereby consents to the transfer of the Purchased Notes contemplated by this Agreement and waives receipt of a written assignment for such transfer. The consent of Amicus International provided herein shall not be construed as a waiver, release, or relinquishment by Amicus International of any of Amicus International's rights and privileges under the Purchased Notes.

5. Miscellaneous.

(a) Undertaking. The parties hereby agree to take whatever additional actions and execute whatever additional documents may be necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith. Each party may rely on such mailing address or email address for all purposes in connection with the ownership of the Purchased Notes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

REDMILE SPECIAL OPPORTUNITIES FUND, LTD.

/s/ Jeremy Green

By: Jeremy Green
Title: Managing Member of the General Partner
and the Investment Manager

Address: One Letterman Drive
Building D, Suite D3-300
San Francisco, CA 94129
Email: operations@redmilegrp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicuxrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird, III

Print Name: William D. Baird, III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Exhibit A

Note No.	Issue Date	Principal Amount	Amicus Entity	Holder
4	February 19, 2016	$ 956,136.30	Amicus Therapeutics International Holding LTD*	Redmile Special Opportunities Fund, Ltd.

* Indicates a Note initially issued by Amicus Therapeutics UK Limited that was assigned to Amicus Therapeutics International Holding LTD, pursuant to that certain Assignment and Assumption Agreement, entered into as of June 30, 2016, by and between Amicus Therapeutics UK Limited and Amicus Therapeutics International Holding LTD.

Exhibit 10.11

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among Redmile Capital Fund, LP (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Notes. On the terms and conditions set forth herein, Purchaser agrees to purchases from Seller and Seller agrees to sell to Purchaser each of the notes issued by Amicus International and described on Exhibit A hereto (the "**Purchased Notes**") at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**").

2. Payment and Closing. As promptly as practicable following the closing of the Purchaser's issuance of a new series of convertible senior notes, as contemplated by that certain Notice of Repurchase, dated December 15, 2016, sent by the Purchaser and Amicus International and acknowledged by the Seller, Purchaser shall pay the Purchase Price for the Purchased Notes in cash, by cashier's check or by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser each of the Purchased Notes, with such instruments of transfer or assignment as are reasonably necessary to effect the transfer.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns all Purchased Notes free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of such Purchased Notes or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Notes.

(b) Seller has full power and authority to sell and transfer the Purchased Notes to Purchaser without obtaining the waiver, consent, order or approval of (i) except as has otherwise been obtained or as otherwise provided for in this Agreement, Amicus International, (ii) any state or federal governmental authority, or (iii) any third party or other person.

(c) The execution and delivery of this Agreement by such Seller and the performance by Seller of his, her, or its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or such Seller's charter documents, nor, to such Seller's knowledge, result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the Purchased Notes, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Notes as herein contemplated, Seller will convey to Purchaser good, valid and marketable title to the Purchased Notes free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is not relying on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Consent to Transfer.

(a) Pursuant to Section 13(a) of each Purchased Note, Amicus International hereby consents to the transfer of the Purchased Notes contemplated by this Agreement and waives receipt of a written assignment for such transfer. The consent of Amicus International provided herein shall not be construed as a waiver, release, or relinquishment by Amicus International of any of Amicus International's rights and privileges under the Purchased Notes.

5. Miscellaneous.

(a) Undertaking. The parties hereby agree to take whatever additional actions and execute whatever additional documents may be necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith. Each party may rely on such mailing address or email address for all purposes in connection with the ownership of the Purchased Notes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

REDMILE CAPITAL FUND, LP

/s/ Jeremy Green

By: Jeremy Green
Title: Managing Member of the General Partner
and the Investment Manager

Address: One Letterman Drive
Building D, Suite D3-300
San Francisco, CA 94129
Email: operations@redmilegrp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicusrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird III

Print Name: William D. Baird III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Exhibit A

Note No.	Issue Date	Principal Amount	Amicus Entity	Holder
1	February 19, 2016	$ 7,085,453.20	Amicus Therapeutics International Holding LTD*	Redmile Capital Fund, LP

* Indicates a Note initially issued by Amicus Therapeutics UK Limited that was assigned to Amicus Therapeutics International Holding LTD, pursuant to that certain Assignment and Assumption Agreement, entered into as of June 30, 2016, by and between Amicus Therapeutics UK Limited and Amicus Therapeutics International Holding LTD.

Exhibit 10.12

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is made as of the 15th day of December, 2016 by and among GCM Grosvenor Special Opportunities Master Fund, Ltd. (the "**Seller**"), Amicus Therapeutics International Holding LTD ("**Amicus International**") and Amicus Therapeutics, Inc. (the "**Purchaser**").

1. Purchase and Sale of Purchased Note. On the terms and conditions set forth herein, Purchaser agrees to purchase from Seller and Seller agrees to sell to Purchaser Note No. 7, issued by Amicus International to Seller on June 30, 2016, with a principal amount equal to $25,000,000 (the "**Purchased Note**"), at the price equal to par, plus all accrued and unpaid interest to the date hereof (such amount, the "**Purchase Price**"), subject to the closing of the Offering (as defined below). For the sake of clarity, and the avoidance of doubt, Purchaser confirms that neither this Agreement nor the consummation of the transactions contemplated hereby grants the Purchaser or any of its affiliates any right to modify, terminate or repurchase the Warrant to Purchase Common Stock, Warrant No. 7, held by the Seller; and such Warrant shall remain unaffected and outstanding and exercisable in accordance with its terms.

2. Payment and Closing. Within three business days of the closing of the Purchaser's issuance of its convertible senior notes due 2023, as described in the preliminary offering circular dated December 14, 2016 (the "**Offering**"), Purchaser shall pay the Purchase Price for the Purchased Note in cash, by wire transfer of immediately available funds to an account designated by Seller, and against such payment, Seller shall deliver to Purchaser the Purchased Note, with the form of assignment attached thereto completed to effect the transfer to Purchaser. Purchaser shall be responsible for, shall pay, and shall hold Seller harmless from, any stamp, court or documentary, intangible, recording, filing or similar transfer taxes (but not any net income taxes) due in respect of the transactions contemplated by this Agreement.

3. Seller Representations. Seller represents and warrants to Purchaser as follows:

(a) Seller owns the Purchased Note free and clear of all liens, pledges, encumbrances, security agreements, equities, options, claims, charges and restrictions of any nature whatsoever, except any restrictions under the terms of the Purchased Note or applicable state and federal securities laws, and has not previously entered into any commitment for the sale of all or part of the Purchased Note or otherwise conveyed or encumbered Seller's interest with respect to the Purchased Note.

(b) Seller has full power and authority to sell and transfer the Purchased Note to Purchaser without obtaining the waiver, consent, order or approval of, (i) any state or federal governmental authority, or (ii) any third party or other person; provided no representation is made hereunder with respect to any securities laws of any jurisdiction or with respect to any waiver, consent, order or approval required of Amicus International, Purchaser or any of their affiliates.

(c) The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations pursuant to this Agreement will not result in any material violation of, or materially conflict with, or constitute a material default under, any agreement to which Seller is a party or Seller's charter documents, nor, to Seller's knowledge, result in the creation under any

---

agreement or instrument to which Seller is a party of any material mortgage, pledge, lien, encumbrance or charge upon the Purchased Note, other than pursuant to this Agreement.

(d) Upon delivery of and payment for the Purchased Note as herein contemplated, Seller will convey to Purchaser good and valid title to the Purchased Note free and clear of all liens, encumbrances, equities, options, claims, charges and restrictions, of any nature whatsoever, other than restrictions under the terms of the Purchased Note and applicable securities laws.

(e) Seller has reviewed with Seller's own tax advisors the federal, state and local tax consequences of the transactions contemplated by this Agreement. Seller is relying solely on such advisors and not on any statements or representations of Purchaser or any of its agents. Seller understands that Seller shall be solely responsible for Seller's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

4. Purchaser's Representations. Purchaser represents and warrants to Seller that Purchaser has taken all necessary steps to inform itself as to, and Purchaser is not relying upon Seller as to, the financial condition of Amicus International and the merits and risks of purchasing the Purchased Note.

5. Consent to Transfer. Pursuant to Section 13(a) of the Purchased Note, Amicus International hereby consents to the transfer of the Purchased Note.

6. Waiver. Seller hereby waives the restriction in Section 5.1 of the Purchased Note regarding incurrence of indebtedness with respect to the incurrence of the indebtedness contemplated by the Offering; provided such waiver shall expire and be of no further force or effect if the purchase of the Purchased Note is not consummated by Purchaser as provided in Section 2.

7. Miscellaneous.

(a) Undertaking. The parties hereby agree to take additional actions and execute additional documents as may be reasonably necessary or advisable in order to effect the transactions contemplated by this Agreement.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. This Agreement shall not be amended except by a writing signed by all of the parties.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws.

(d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same

instrument. Signatures transmitted electronically shall be accepted as originals for all purposes of this Agreement.

(e) Notice. Notice hereunder shall be given by written delivery or confirmed facsimile thereof to the parties at their respective mailing addresses or email addresses set forth on the signature page hereof or to such other mailing address or email address as the other party shall be notified of in accordance herewith.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

GCM GROSVENOR SPECIAL OPPORTUNITIES MASTER FUND, LTD.
By: GCM Fiduciary Services, LLC, its director

Signature: /s/ Burke J. Montgomery

Print Name: Burke J. Montgomery
Address: c/o Grosvenor Capital Management, L.P.
900 N. Michigan Ave., Suite 1100
Chicago, IL 60660
Email: legal@gcmlp.com

AMICUS THERAPEUTICS INTERNATIONAL HOLDING LTD

Signature: /s/ Daphne Quimi

Print Name: Daphne Quimi
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: dquimi@amicusrx.com

Signature: /s/ Geoffrey Ghyoot

Print Name: Geoffrey Ghyoot
Address: Phoenix House
Oxford Road, Tatling End
Gerards Cross, Buckinghamshire
SL9 7AP UK
Email: gghyoot@amicusrx.com

AMICUS THERAPEUTICS, INC.

Signature: /s/ William D. Baird III

Print Name: William D. Baird III
Address: 1 Cedar Brook Drive
Cranbury, NJ 08512
Email: cbaird@amicusrx.com

Amicus Therapeutics Announces Closing of Offering of Senior Convertible Notes and Exercise in Full of Option to Purchase Additional Notes

CRANBURY, NJ, December 21, 2016 — Amicus Therapeutics (Nasdaq: FOLD), a global biotechnology company at the forefront of rare and orphan diseases, announced the closing of its previously announced private offering of $250 million aggregate principal amount of 3.00% convertible senior notes due 2023 (the "notes"), including the full exercise by the initial purchasers of their option to purchase up to an additional $25 million aggregate principal amount of notes on the same terms and conditions, solely to cover over-allotments. Amicus anticipates that the aggregate net proceeds of the offering will be approximately $243.0 million.

The notes are senior unsecured obligations of Amicus. The notes bear interest at a rate of 3.00% per annum, payable semi-annually on June 15 and December 15 of each year, beginning on June 15, 2017. The notes will mature on December 15, 2023, unless earlier repurchased, redeemed or converted. The notes are convertible at the option of holders, under certain circumstances and during certain periods, into cash, shares of Amicus' common stock or a combination of cash and shares of Amicus' common stock, at Amicus' election. The initial conversion rate of the notes is 163.3987 shares of Amicus' common stock per $1,000 principal amount of notes, which is equivalent to an initial conversion price of approximately $6.12 per share of Amicus' common stock. The initial conversion price represents a premium of approximately 27.5% over the last reported sale price of Amicus' common stock on December 15, 2016 of $4.80. The conversion rate will be subject to adjustment upon the occurrence of certain events. Amicus may redeem for cash all or part of the notes, at its option, on or after December 19, 2020, under certain circumstances at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

Goldman, Sachs & Co., J.P. Morgan Securities LLC, BofA Merrill Lynch and Leerink Partners LLC acted as bookrunners for the offering, and Cowen and Company acted as lead manager.

In connection with the pricing of the notes and upon exercise of the initial purchasers' over-allotment option, Amicus entered into privately negotiated capped call transactions with Royal Bank of Canada, JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities LLC, and Goldman, Sachs & Co. The capped call transactions are expected generally to reduce the potential dilution to existing stockholders and/or offset the potential cash payments Amicus would be required to make in excess of the principal amount of the notes upon their conversion, with such reduction and/or offset subject to a cap.

Amicus used approximately $13.5 million of the net proceeds from the offering to fund the payment of the cost of the capped call transactions and approximately $82.2 million of the net proceeds from the offering to refinance existing unsecured debt. Amicus intends to use the balance of the net proceeds from the offering for general corporate purposes.

The offering was made to qualified institutional buyers pursuant to Rule 144A under the Securities Act. Neither the notes nor any share of Amicus's common stock issuable upon conversion of the notes have been or are expected to be registered under the Securities Act or under any state securities laws and, unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall it constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful.

About Amicus Therapeutics

Amicus Therapeutics (Nasdaq: FOLD) is a global biotechnology company at the forefront of therapies for rare and orphan diseases. The Company has a robust pipeline of advanced therapies for a broad range of human genetic diseases. Amicus' lead programs in development include the small molecule pharmacological chaperone migalastat as a monotherapy for Fabry disease, SD-101 for Epidermolysis Bullosa (EB), as well as novel enzyme replacement therapy (ERT) and biologic products for Fabry disease, Pompe disease, and other rare and devastating diseases.

Forward-Looking Statements

This press release includes forward-looking statements regarding Amicus's future plans, including statements related to Amicus's intended use of the net proceeds of the offering. These statements constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. The words "may," "might," "will," "should," "estimate," "project," "plan," "anticipate," "expect," "intend," "outlook," "believe" and other similar expressions are intended to identify forward looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this press release and Amicus undertakes no obligation to update any forward-looking statement in this press release except as required by law. These forward looking statements are based on estimates and assumptions by Amicus's management that, although believed to be reasonable, are inherently uncertain and subject to a number of risks. There can be no assurance that Amicus will be able to complete the proposed offering of notes on acceptable terms, or at all. Actual results may differ materially from those anticipated or predicted by Amicus's forward-looking statements as a result of various important factors, including, but not limited to, the terms of the notes and the offering, the risks and uncertainties related to whether or not Amicus will consummate the offering, and the impact of general economic, industry, market or political conditions. In addition, all forward-looking statements are subject to other risks detailed in our Annual Report on Form 10-K for the year ended December 31, 2015 and Quarterly Report on Form 10-Q for the quarter ended September 30, 2016. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement, and we undertake no obligation to revise or update this news release to reflect events or circumstances after the date hereof.

CONTACTS:

Investors/Media:

Amicus Therapeutics
Sara Pellegrino
Senior Director, Investor Relations
spellegrino@amicusrx.com
(609) 662-5044

Media:

MWW PR
Sid Dinsay
sdinsay@mww.com
(646) 381-9017

FOLD—G