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): **January 11, 2018**

EXACT SCIENCES CORPORATION

(Exact Name of Registrant as Specified in Charter)

Delaware	**001-35092**	**02-0478229**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

441 Charmany Drive
Madison, WI 53719
(Address of Principal Executive Offices)(Zip Code)

Registrant's telephone number, including area code: **(608) 284-5700**

Not Applicable
(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:

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

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

1.01 Entry into a Material Definitive Agreement.

Underwriting Agreement and Indenture

On January 11, 2018, Exact Sciences Corporation (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the underwriters named therein (collectively, the "Underwriters"), pursuant to which the Company (i) agreed to sell $600 million aggregate principal amount of its 1.0% Convertible Senior Notes due 2025 ("Notes"), and (ii) granted the Underwriters an option to purchase up to an additional $90 million aggregate principal amount of Notes. The Underwriters exercised in full their option to purchase the additional $90 million aggregate principal amount of Notes on January 12, 2018.

The Notes were offered and sold in a public offering (the "Offering") registered under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to the Company's automatic shelf registration statement on Form S-3 filed with the Securities and Exchange Commission on June 6, 2017, which was effective upon filing (Registration No. 333-218535), and is being made pursuant to a prospectus supplement, dated January 11, 2018, and a base prospectus, dated June 6, 2017, filed by the Company with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act.

The Underwriting Agreement includes customary representations, warranties and covenants. Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act, or contribute to payments that the Underwriters may be required to make in respect of those liabilities.

The Offering closed on January 17, 2018. The Company estimates that net proceeds from the sale of the Notes will be approximately $671.3 million (after deducting underwriting discounts and commissions and estimated offering expenses).

The Notes were issued pursuant to an indenture, dated as of January 17, 2018 (the "Base Indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by the first supplemental indenture dated as of January 17, 2018 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), between the Company and the Trustee.

The Notes will mature on January 15, 2025 (the "Maturity Date"), unless earlier converted or repurchased. The Notes are senior unsecured obligations of the Company and bear interest at a rate of 1.0% per year, payable semi-annually in arrears on January 15 and July 15 of each year, beginning on July 15, 2018.

Prior to July 15, 2024, the Notes will be convertible only upon the occurrence of certain events and during certain periods, and thereafter, until the close of business on the second scheduled trading day immediately preceding the Maturity Date. The Notes will be convertible into cash, shares of the Company's common stock (plus, if applicable, cash in lieu of any fractional share), or a combination of cash and shares of the Company's common stock, at the Company's election.

The Company may not redeem the Notes prior to the Maturity Date. If a "fundamental change" (as defined in the Indenture) occurs prior to the Maturity Date, subject to certain conditions, holders may require the Company to repurchase for cash all or any portion 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, if any, to, but excluding, the fundamental change repurchase date.

The conversion rate for the Notes is initially 13.2569 shares per $1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately $75.43 per share of common stock, representing a conversion premium of approximately 37.0% over the last reported sale price of $55.06 per share of the Company's common stock on the NASDAQ Capital Market on January 11, 2018. The conversion rate is subject to adjustment upon the occurrence of certain specified events but will not be adjusted for accrued and unpaid interest. In addition, holders of the Notes who convert their Notes in connection with a "make-whole fundamental change" (as defined in the Indenture), will, under certain circumstances, be entitled to an increase in the conversion rate.

The Indenture contains customary events of default including: (1) the Company's failure to pay an installment of interest on any of the Notes for 30 calendar days after the date when due; (2) the Company's failure to pay when due (a) the principal of the Notes or (b) the fundamental change repurchase price payable in respect of any Notes; (3) the Company's failure to perform or its breach of any covenant or warranty of the Company contained in the Notes or the Indenture for a period of 60 consecutive calendar days after written notice of such failure, requiring the Company to remedy the same, shall have been given (a) to the Company by the Trustee or (b) to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Notes then outstanding; and (4) certain events of bankruptcy, insolvency or reorganization with respect to the Company.

If an event of default occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes, by notice to the Company and the Trustee, may declare the principal of all of the then outstanding Notes to be due and payable.

The Indenture provides that the Company may, without the consent of the holders of the Notes, consolidate with, merge into or transfer all or substantially all of its consolidated assets to any corporation organized under the laws of the United States or any of its political subdivisions provided that: (1) the surviving entity (if not the Company) assumes all the Company's obligations under the Indenture and the Notes, as provided in the Indenture; (2) at the time of and immediately after giving effect to such transaction, no default or event of default shall have occurred and be continuing; and (3) if the Company will not be the resulting or surviving corporation from the consolidation, merger or transfer, an officer's certificate and an opinion of counsel, each stating that the consolidation, merger or transfer complies with the Indenture, have been delivered to the Trustee.

The foregoing description of the Underwriting Agreement, the Base Indenture and the Supplemental Indenture does not purport to be complete and is qualified in its entirety by reference to the full text of the agreements, which are attached as Exhibit 1.1, Exhibit 4.1 and Exhibit 4.2, respectively, hereto. The form of the Notes issued pursuant to the Indenture is attached as an exhibit to the Supplemental Indenture and the terms and conditions thereof are incorporated by reference herein.

In connection with the offering of the Notes, the Company is filing the opinion and consent of its counsel, K&L Gates LLP, regarding the validity of the securities being registered as Exhibits 5.1 and 23.1 hereto, respectively.

The Underwriting Agreement, the Indenture and the opinion filed herewith are incorporated by reference into the above referenced automatic shelf registration statement on Form S-3.

8.01 Other Events.

On January 11, 2017, the Company issued a press release announcing the pricing of the Offering of the Notes. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

9.01. Financial Statements and Exhibits.

Exhibits

The exhibits to this Current Report on Form 8-K are listed in the Exhibit Index attached hereto and incorporated herein by reference.

EXHIBIT INDEX

Exhibit No	Exhibit Description
1.1	Underwriting Agreement, dated January 11, 2018, by and between the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein.
4.1	Indenture, dated January 17, 2018, between the Company and U.S. Bank National Association, as Trustee.
4.2	First Supplemental Indenture, dated January 17, 2018, between the Company and U.S. Bank National Association, as Trustee (including the form of 1.0% Convertible Senior Notes due 2025).
5.1	Opinion of K&L Gates LLP.
23.1	Consent of K&L Gates LLP (included in Exhibit 5.1).
99.1	Press release dated January 11, 2018.

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.

EXACT SCIENCES CORPORATION

Date: January 17, 2018

By: /s/ Jeffrey T. Elliott
Jeffrey T. Elliott
Chief Financial Officer

Exhibit 1.1

Exact Sciences Corporation

$600,000,000

1.0% Convertible Senior Notes

UNDERWRITING AGREEMENT

January 11, 2018

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

as Representative of the several Underwriters
c/o Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Ladies and Gentlemen:

Exact Sciences Corporation, a Delaware corporation (the " **Company** "), proposes to issue and sell to the several underwriters named in Schedule A (the " **Underwriters** ") $600,000,000 aggregate principal amount of the Company's 1.0% Convertible Senior Notes (the " **Convertible Senior Notes** "). The $600,000,000 aggregate principal amount of the Convertible Senior Notes to be sold by the Company are called the " **Initial Securities** ." In addition, the Company has granted to the Underwriters an option to purchase up to an additional $90,000,000 aggregate principal amount of its Convertible Senior Notes as provided in Section 2. The additional $90,000,000 aggregate principal amount of Convertible Senior Notes to be sold by the Company pursuant to such option are called the " **Option Securities** ." The Initial Securities and, if and to the extent such option is exercised, the Option Securities are collectively called the " **Securities** ." The Securities are to be issued pursuant to an indenture dated as of January 17, 2018 (the " **Indenture** ") between the Company and U.S. Bank National Association, as trustee (the " **Trustee** "). The term "Indenture," as used herein, includes the Officers' Certificate (as defined in the Indenture) and/or any supplemental indenture establishing the form and terms of the Securities pursuant the Indenture. Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as representative of the several Underwriters (" **Merrill Lynch** " or, in such capacity, the " **Representative** ").

The Company has prepared and filed with the Securities and Exchange Commission (the " **Commission** ") a shelf registration statement on Form S-3 (File No. 333-218535), including a base prospectus (the " **Base Prospectus** ") to be used in connection with the public offering and sale of the Securities. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, in the form in which it became effective under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the " **Securities Act** "), including all documents incorporated or deemed to be incorporated by reference therein and any information deemed to be a part thereof at the time of

effectiveness pursuant to Rule 430B under the Securities Act, is collectively called the " **Registration Statement** ." The preliminary prospectus supplement dated January 11, 2018 describing the Securities and the offering thereof, together with the Base Prospectus, is called the " **Preliminary Prospectus** ," and the Preliminary Prospectus and any other preliminary prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof and is used prior to the filing of the Prospectus (as defined below), together with the Base Prospectus, is called a " **preliminary prospectus** ." As used herein, the term " **Prospectus** " shall mean the final prospectus supplement to the Base Prospectus that describes the Securities and the offering thereof (the " **Final Prospectus Supplement** "), together with the Base Prospectus, in the form first used by the Underwriters to confirm sales of the Securities or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act. As used herein, " **Applicable Time** " is 9:43 p.m. (New York time) on January 11, 2018. As used herein, " **free writing prospectus** " has the meaning set forth in Rule 405 under the Securities Act, and " **Time of Sale Prospectus** " means the preliminary prospectus, as amended or supplemented immediately prior to the Applicable Time, together with the free writing prospectuses, if any, identified in Schedule B hereto (each, a " **Permitted Free Writing Prospectus** "), and each "road show" (as defined in Rule 433 under the Securities Act), if any, related to the offering of the Securities contemplated hereby that is a "written communication" (as defined in Rule 405 under the Securities Act) (each such road show, a " **Road Show** "). As used herein, the term " **Applicable Prospectus** " shall mean each of the Preliminary Prospectus, the Time of Sale Prospectus and the Prospectus, individually. As used herein, the terms " **Registration Statement** ," " **Preliminary Prospectus** ," " **preliminary prospectus** ," " **Base Prospectus** ," " **Time of Sale Prospectus** " and " **Prospectus** " shall include the documents incorporated or deemed to be incorporated by reference therein. All references in this Agreement to amendments or supplements to the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the " **Exchange Act** ") which is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus, as the case may be. All references in this Agreement to (i) the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (" **EDGAR** ") and (ii) the Prospectus shall be deemed to include the "electronic Prospectus," if any, provided for use in connection with the offering of the Securities as contemplated by Section 3(n) of this Agreement.

All references in this Agreement to financial statements and schedules and other information which are " **contained** ," " **included** " or " **stated** " in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or

supplements to the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Exchange Act that is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus, as the case may be.

In the event that the Company has only one subsidiary, then all references herein to "subsidiaries" of the Company shall be deemed to refer to such single subsidiary, *mutatis mutandis* .

The Company hereby confirms its agreements with the Underwriters as follows:

Section 1. Representations and Warranties of the Company . The Company hereby represents, warrants and covenants to each Underwriter, as of the date of this Agreement, as of the First Closing Date (as hereinafter defined) and as of each Option Closing Date (as hereafter defined), if any, and covenants with each Underwriter, as follows:

(a) *Compliance with Registration Requirements* . The Registration Statement has become effective under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information, if any. No stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

Each Applicable Prospectus and the Prospectus when filed complied in all material respects with the Securities Act and, if filed by electronic transmission pursuant to EDGAR (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Underwriters for use in connection with the offer and sale of the Securities. Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective and at all subsequent times, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, each Applicable Prospectus did not, and at the time of each sale of the Securities and at the First Closing Date, the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, and taken together with the information conveyed to purchasers of the Securities identified in Schedule B hereto, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as then amended or supplemented, as of the date of the Final Prospectus Supplement and at all subsequent times, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to the

Statement of Eligibility (Form T-1) of the Trustee under the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated thereunder (collectively, the " **Trust Indenture Act** "), statements in or omissions from the Registration Statement or any post-effective amendment thereto, or the Prospectus or any Applicable Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to any Underwriter furnished to the Company in writing by the Representative expressly for use therein, it being understood and agreed that the only such information furnished by the Representative to the Company consists of the information described in Section 9(b) below. There are no contracts or other documents required to be described in the Time of Sale Prospectus or the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

The Company is not an "ineligible issuer" in connection with the offering of the Securities pursuant to Rules 164, 405 and 433 under the Securities Act. Each free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act including timely filing with the Commission or retention where required and legending, and each such free writing prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, the Prospectus or any preliminary prospectus. Except for the Permitted Free Writing Prospectuses, if any, identified in Schedule B hereto, and electronic road shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.

(b) *S-3 Eligibility/WKSI Status.* At the time the Registration Statement became effective and at the time the Company's Annual Report on Form 10-K for the year ended December 31, 2016 (the "Annual Report") was filed with the Commission, the Company met the then-applicable requirements for use of Form S-3 under the Securities Act and at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Securities Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Securities Act, the Company was a "well known seasoned issuer" as defined in Rule 405 under the Securities Act. The Company meets the requirements for use of Form S-3 under the Securities Act specified in Rule 5110(b)(7)(C)(i) of the Financial Industry Regulatory Authority (" **FINRA** "). The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, and became effective on June 6, 2017. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the Company's use of the automatic shelf registration form.

(c) *FINRA Matters* . All of the information provided to the Underwriters or to counsel for the Underwriters by the Company, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering's compliance with FINRA's rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rule 5110 or 5121 is true, complete and correct.

(d) *Stock Exchange Listing.* The common stock of the Company, $0.01 par value per share (" **Common Stock** ") is registered pursuant to Section 12(b) of the Exchange Act and is listed on the Nasdaq Capital Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq Capital Market, nor has the Company received any notification that the Commission or the Nasdaq Capital Market is contemplating terminating such registration or listing.

(e) *Parties to Lock-Up Agreements.* Each of the Company's directors and executive officers has executed and delivered to the Representative a lock-up agreement in the form of Exhibit C hereto. Exhibit D hereto contains a true, complete and correct list of all directors and executive officers of the Company. If any additional persons shall become directors or executive officers of the Company prior to the end of the Company Lock-up Period (as defined below), the Company shall use reasonable efforts to cause each such person, prior to or contemporaneously with their appointment or election as a director or executive officer of the Company, to execute and deliver to the Representative an agreement in the form attached hereto as Exhibit C .

(f) *Offering Materials Furnished to Underwriters.* The Company has delivered to the Representative two complete manually signed copies of the Registration Statement, each amendment thereto and of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement, each amendment thereto (without exhibits) and preliminary prospectuses, the Time of Sale Prospectus, the Prospectus, as amended or supplemented, and any free writing prospectus reviewed and consented to by the Representative, in such quantities and at such places as the Representative has reasonably requested for each of the Underwriters.

(g) *Distribution of Offering Material by the Company.* The Company has not distributed and will not distribute, prior to the later of (i) the expiration or termination of the option granted to the several Underwriters in Section 2 and (ii) the completion of the Underwriters' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than a preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus reviewed and consented to by the Representative, or the Registration Statement.

(h) *The Underwriting Agreement.* This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by

bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(i) *The Indenture* . The Indenture has been duly authorized by the Company and duly qualified under the Trust Indenture Act and, when duly executed and delivered by the Company and the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles (regardless of whether enforcement is considered in a proceeding in equity or at law).

(j) *Authorization of the Securities and the Common Stock.* The Securities have been duly authorized and, at the First Closing Date, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles, and will be in the form contemplated by, and entitled to the benefits of, the Indenture. The shares of Common Stock issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company (regardless of whether enforcement is considered in a proceeding in equity or at law).

(k) *Description of the Securities, the Common Stock and the Indenture* . The Securities and the Indenture will conform in all material respects to the respective statements relating thereto contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus and will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement.

(l) *No Applicable Registration or Other Similar Rights.* There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(m) *Organization and Good Standing of the Company* . The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in each Applicable Prospectus and is

duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate (i) have a material adverse effect on the assets, business, condition (financial or otherwise), management, operations, earnings results or prospects of the Company and its subsidiaries, considered as one entity, (ii) prevent or materially interfere with consummation of the transactions contemplated hereby, or (iii) result in the delisting of shares of Common Stock from the Nasdaq Capital Market (the occurrence of any such effect, prevention, interference or result described in the foregoing clauses (i), (ii) or (iii) being herein referred to as a " **Material Adverse Effect** ").

(n) *Subsidiaries.* Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Time of Sale Prospectus and the Prospectus. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, have a Material Adverse Effect. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. Beijing Exact Sciences Medical Technology Company Ltd. is immaterial to the business, assets, financial condition, results of operations and properties of the Company and its subsidiaries taken as a whole. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than (i) the subsidiaries listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016.

(o) *Capitalization.* The authorized and outstanding capitalization of the Company is as set forth in the Preliminary Prospectus and the Time of Sale Prospectus and will be as set forth in the Prospectus, subject, in each case, to the issuance of shares of Common Stock upon exercise of stock options and warrants disclosed as outstanding in the Applicable Prospectuses and the grant of options under existing stock option plans described in the Applicable Prospectuses. The authorized capital stock of the Company conforms and will conform as to legal matters to the description thereof contained in the Applicable Prospectuses.

(p) *Outstanding Shares* . The shares of Common Stock outstanding prior to the issuance of the Securities to be sold by the Company have been duly authorized, are validly issued, fully paid and non-assessable, have been issued in compliance in all

material respects with applicable securities laws and were not issued in violation of any preemptive rights, rights of first refusal or other similar rights. All prior offers and sales of securities by the Company were made in compliance in all material respects with the Securities Act and all other applicable laws and regulations. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in each Applicable Prospectus. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in each Applicable Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(q) *No Conflicts* . Neither the execution and delivery by the Company of, nor the performance by the Company of its obligations under, this Agreement will conflict with, contravene, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any assets of the Company or any of its subsidiaries pursuant to, or constitute a default under (i) any statute, law, rule, regulation, judgment, order or decree of any governmental body, regulatory or administrative agency or court having jurisdiction over the Company or any of its subsidiaries; (ii) the certificate of incorporation or bylaws of the Company or the organizational documents of any subsidiary; or (iii) any contract, agreement, obligation, covenant or instrument to which the Company or any of its subsidiaries (or any of their assets) are subject or bound, other than, in the cases of clauses (i) and (iii), such conflicts, breaches, violations, liens, charges, encumbrances and defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

(r) *No Violation or Default* . The Company and its subsidiaries are not, and will not with the giving of notice or passage of time or both be, in violation or in breach of its certificate of incorporation, bylaws or other comparable organizational documents. The Company and its subsidiaries are not, and will not with the giving of notice or passage of time or both be, in violation or in breach of (i) any statute, ordinance, order, rule or regulation applicable to the Company or any of its subsidiaries; (ii) any order or decree of any court, regulatory body, arbitrator, administrative agency or other instrumentality of the United States or other country or jurisdiction having jurisdiction over the Company or any of its subsidiaries; or (iii) any provisions of any agreement, lease, franchise, license, indenture, permit, mortgage, deed of trust, evidence of indebtedness or other instrument to which the Company or its subsidiaries are a party or by which any property owned or leased by the Company or any of its subsidiaries is bound or affected, except, with respect to each of clauses (i) through (iii), for such violations or breaches as do not or would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) *No Consents Required* . No approval, authorization, consent or order of or filing with any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the Nasdaq Capital

Market), or approval of the Company's stockholders, is required in connection with the issuance and sale of the Shares or the consummation of the transactions contemplated hereby, other than (i) registration of the Securities under the Securities Act, which has been effected, (ii) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Securities are being offered by the Underwriters; (iii) the filing of a notice of listing of additional shares and related materials with the Nasdaq Capital Market, (iv) under the FINRA Rules or (v) any filings required under the Exchange Act, which have been or will be made when and how required.

(t) *Legal Proceedings* . There are no actions, suits, claims, investigations or proceedings pending or, to the Company's knowledge, threatened or contemplated to which the Company, any of its subsidiaries, or any of its current directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or before or by any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the Nasdaq Capital Market) other than any such action, suit, claim, investigation or proceeding accurately described in the Time of Sale Prospectus and the Prospectus, which, if resolved adversely to the Company, any of its subsidiaries, or any of its current directors or officers, would not, individually or in the aggregate, have a Material Adverse Effect. There are no statutes, regulations, transactions, obligations, contracts or other documents that are required to be described in the Registration Statement or any Applicable Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(u) *Investment Company Act* . The Company is not, and immediately after giving effect to the offering and sale of the Securities on the date hereof and the application of the proceeds thereof as described in the Prospectus will not be, an "investment company" (as such term is defined under the Investment Company Act of 1940, as amended (" **1940 Act** ")) that is registered or required to be registered under the 1940 Act.

(v) *Financial Statements; Independent Accountants.* The financial statements included or incorporated by reference in the Registration Statement and the Applicable Prospectuses, together with the related notes and schedules, present fairly the financial position of the Company and its subsidiaries as of the dates indicated and the results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance in all material respects with the requirements of the Securities Act and Exchange Act and in conformity with U.S. generally accepted accounting principles applied on a consistent basis during the periods involved; the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto; the pro forma financial statements or data, if any, included or incorporated by reference in the Registration Statement or any Applicable Prospectus comply with the requirements of the Securities Act and the Exchange Act, and the assumptions used in the preparation of such pro forma financial

statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the transactions or circumstances described therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data; the other financial and statistical data contained or incorporated by reference in the Registration Statement or any Applicable Prospectus are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, the Time of Sale Prospectus or the Prospectus that are not included or incorporated by reference as required; the Company does not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in each Applicable Prospectus; and all disclosures contained or incorporated by reference in the Applicable Prospectuses regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission), if any, comply with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable. BDO USA, LLP, which has expressed its opinion with respect to the consolidated financial statements of the Company as of December 31, 2016 and 2015 and for the three-year period ended December 31, 2016, is an independent registered public accounting firm as required by the Securities Act. To the Company's actual knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB, has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data filed with the Commission as a part of the Registration Statement and included in any Applicable Prospectus.

(w) *Statistical and Market-Related Data.* All statistical or market-related data included or incorporated by reference in any Applicable Prospectus or in a Permitted Free Writing Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required. Each "forward-looking statement" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained or incorporated by reference in the Registration Statement, any Applicable Prospectus or any Permitted Free Writing Prospectus has been made or reaffirmed with a reasonable basis and in good faith.

(x) *Compliance with and Liability under Environmental Laws* . The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (" **Environmental Laws** "), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, individually or in

the aggregate, have a Material Adverse Effect. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would have a Material Adverse Effect.

(y) *ERISA Compliance* . The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, " **ERISA** ")) established or maintained by the Company, its subsidiaries or their ERISA Affiliates (as defined below) are in compliance in all material respects with ERISA. " **ERISA Affiliate** " means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c),(m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the " **Code** ") of which the Company or such subsidiary is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. No "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company nor its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of its ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(z) *No Material Adverse Change.* Subsequent to the respective dates as of which information is given in each of the Registration Statement and each Applicable Prospectus, (i) there has not occurred any material adverse change, or any development involving a prospective material adverse change, in the assets, business, condition (financial or otherwise), management, operations or earnings results, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity, (a " **Material Adverse Change** "); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction, whether or not in the ordinary course of business; (iii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iv) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company or its subsidiaries, except in each case as described in each of the Registration Statement and each Applicable Prospectus.

(aa) *Title to Real and Personal Property* . The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by each that is material to the business of the Company or any subsidiary, in each case free and clear of all liens, encumbrances and defects except such as are described in each Applicable Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any subsidiary; and any real property and buildings held under lease by the Company or any subsidiary are held by it under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company or any subsidiary, in each case except as described in the Applicable Prospectuses.

(bb) *Title to Intellectual Property* . The Company and its subsidiaries own or possesses valid license to all inventions, patent applications, patents, trademarks (both registered and unregistered), trade names, service names, copyrights, trade secrets and other proprietary information described in the Registration Statement or any Applicable Prospectus as being owned or licensed by it or which is necessary for the conduct of, or material to, its businesses as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the Registration Statement or any Applicable Prospectus as under development) (collectively, the " **Intellectual Property** "), and (i) there are no third parties who have or, to the Company's knowledge, will be able to establish rights to any material items of Intellectual Property, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Registration Statement or any Applicable Prospectus disclose is licensed to the Company or any of its subsidiaries; (ii) there is no infringement by third parties of any Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or any of its subsidiaries' rights in or to any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringe or otherwise violate, or would, upon the commercialization of any product or service described in the Registration Statement or any Applicable Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) the Company and its subsidiaries have complied in all material respects with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any subsidiary, and all such agreements that are material to the Company or any subsidiary are in full force and effect; (vii) to the knowledge of the Company, there is no patent or patent application that contains claims that interfere with the issued or pending claims of any of the Intellectual Property or that challenges the validity,

enforceability or scope of any of the Intellectual Property; and (viii) to the knowledge of the Company, there is no prior art that forms a reasonable basis to render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office.

(cc) *No Labor Disputes* . No material labor dispute with the employees of the Company or any subsidiary exists, except as described in each Applicable Prospectus, or, to the knowledge of the Company, is imminent; and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that would have a Material Adverse Effect. Neither the Company nor any subsidiary is in violation of any provision of ERISA, except for such violations as would not have a Material Adverse Effect.

(dd) *Insurance.* The Company and its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged; the Company and its subsidiaries have not been refused any insurance coverage sought or applied for and the Company has no reason to believe that it or any subsidiary will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(ee) *Licenses and Permits* . The Company and its subsidiaries possess all material certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, and the Company and its subsidiaries have not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

(ff) *Accounting Controls* . The Company maintains "internal control over financial reporting" (as defined in Rules 13a-15 and 15d-15 under the Exchange Act) in compliance with the requirements of the Exchange Act. The Company's internal control over financial reporting has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and is effective in performing the functions for which it was established. Except as described in each Applicable Prospectus, since the end of the Company's most recent audited fiscal year, there has been (i) no significant deficiency or material weakness in the design or operation of the Company's internal control over financial reporting (whether or not remediated) which is reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, and (ii) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(gg) *Disclosure Controls* . The Company maintains "disclosure controls and procedures" (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and principal financial officer by others within the Company, and such disclosure controls and procedures are effective in performing the functions for which they were established; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 and any related rules and regulations promulgated by the Commission (collectively, the " **Sarbanes-Oxley Act** "), and the statements made in each such certification are accurate; the Company and its directors and officers are each in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act.

(hh) *No Termination of Agreements.* Neither the Company nor any of its subsidiaries has sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in any Applicable Prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement (except as expressly disclosed therein), and no such termination or non-renewal has been threatened by the Company or any of its subsidiaries or, to the Company's knowledge, any other party to any such contract or agreement, except for any termination or non-renewal that would not, individually or in the aggregate, have a Material Adverse Effect.

(ii) *Taxes.* All tax returns required to be filed by the Company or any subsidiary have been timely filed, and all taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities have been timely paid, other than where the failure to file such tax returns or to pay such taxes would not, individually or in the aggregate, have a Material Adverse Effect.

(jj) *Foreign Corrupt Practices Act* . Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder; and the Company and its subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance therewith, including without limitation a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(kk) *No Unregistered Sales of Common Stock.* Except as disclosed in each Applicable Prospectus, the Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(ll) *No Stabilization* . Neither the Company nor any of its subsidiaries nor any of its directors, officers, affiliates or controlling persons has taken, directly or indirectly, any action designed, or which has constituted or might reasonably be expected, to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(mm) *Related Party Transactions* . There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in any Applicable Prospectus which have not been described as required.

(nn) *No Outstanding Loans or Other Extensions of Credit* . Since the adoption of Section 13(k) of the Exchange Act, the Company and its subsidiaries have not extended or maintained credit, arranged for the extension of credit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer (or equivalent thereof) of the Company except for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

(oo) *No Unlawful Contributions or Other Payments* . Neither the Company nor any of its subsidiaries nor, to the best of the Company's knowledge, any employee or agent of the Company or any subsidiary has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement and an Applicable Prospectus.

(pp) *Money Laundering Laws* . The operations of the Company and its subsidiaries are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the " **Money Laundering Laws** ") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(qq) *OFAC* . Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or person acting on behalf of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury

Department (“ **OFAC** ”); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(rr) *Broker’s Fees* . Except as described in each Applicable Prospectus and except for amounts payable to XMS Capital Partners, LLC, which amounts are included in the expenses payable by the Company in connection with the offering set forth in the Applicable Prospectus, the Company is not a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or the Underwriters for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Securities.

(ss) *Health Care Authorizations* . The Company and each of its subsidiaries has submitted and possesses, or qualifies for applicable exemptions to, such valid and current registrations, listings, approvals, clearances, licenses, certificates, authorizations or permits and supplements or amendments thereto (collectively, “ **Health Care Authorizations** ”) issued or required by the appropriate state, material federal or national, supranational or international regulatory agencies, bodies or self-regulating organizations (collectively, “ **Health Regulatory Agencies** ”) necessary to conduct its business as described in the Registration Statement, the Time of Sale Prospectus and the Prospectus including, without limitation, all such Health Care Authorizations required by the Food and Drug Administration (the “ **FDA** ”), the Department of Health and Human Services or any other Health Regulatory Agencies engaged in the regulation of medical devices, except as, singly or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Company has not received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Health Care Authorization, except where such revocation, modification or non-compliance, singly or in the aggregate, would not result in a Material Adverse Effect.

(tt) *Compliance with Health Care Laws* . The Company and each of its subsidiaries is, and has been, in compliance with all applicable Health Care Laws, and has not engaged in activities which are, as applicable, cause for false claims liability, civil penalties, or mandatory or permissive exclusion from Medicare, Medicaid, or any other state health care program or federal health care program, except where such noncompliance, false claims liability or civil penalties would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect. For purposes of this Agreement, “ **Health Care Laws** ” means all health care laws applicable to the Company and its subsidiary, including, but not limited to: the Federal Food, Drug, and Cosmetic Act, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 (“ **HIPAA** ”) (42 U.S.C. Section 1320d et seq.), the exclusion

laws (42 U.S.C. § 1320a-7), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a) (" **CLIA** ") and any and all other applicable federal, state, local and other foreign health care laws and the regulations promulgated pursuant to such laws, each as amended from time to time. Neither the Company nor any of its subsidiaries has received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or any Health Regulatory Agency or third party alleging that any product operation or activity is in material violation of any Health Care Laws, and, to the Company's knowledge, no such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action is threatened. Neither the Company nor its subsidiaries is a party to or has ongoing reporting obligations pursuant to any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any Health Regulatory Agency. Additionally, neither the Company nor its subsidiaries nor, to the knowledge of the Company, any of its employees, officers or directors has been excluded, suspended or debarred from participation in any U.S. federal health care program or human research study or trial or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action by any Health Regulatory Agency that could reasonably be expected to result in debarment, suspension, or exclusion.

(uu) *Research Studies and Trials* . (A) The research studies and trials conducted by or on behalf of, or sponsored by, the Company or its subsidiary, or in which the Company or its subsidiary has participated, that are described in the Registration Statement, the Time of Sale Prospectus or the Prospectus, or the results of which are referred to in the Registration Statement, the Time of Sale Prospectus or the Prospectus were and, if still pending, are being, conducted in all material respects in accordance with applicable experimental protocols, procedures and controls pursuant to, where applicable, accepted professional and scientific standards for products or product candidates comparable to those being developed by the Company and all applicable statutes, rules and regulations of the Health Regulatory Agencies to which they are subject; (B) the descriptions of the results of such studies and trials contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus do not contain any misstatement of a material fact or omit to state a material fact necessary to make such statements not misleading; (C) neither the Company nor its subsidiaries have any knowledge of any research studies or trials not described in the Applicable Prospectus the results of which reasonably call into question in any material respect the results of the research studies and trials described in the Registration Statement, the Time of Sale Prospectus and the Prospectus; (D) neither the Company nor its subsidiary has received any written notices or correspondence from any Health Regulatory Agency or any institutional review board or comparable authority requiring or threatening the premature termination, suspension, material modification or clinical hold of any research studies or trials conducted by or on behalf of, or sponsored by, the Company or its subsidiary or in which the Company or its subsidiary has participated that are described in the Registration Statement, the Time of Sale Prospectus or the Prospectus, and, to the

Company's knowledge, there are no reasonable grounds for the same; and (E) there has not been any violation of applicable law or regulation by the Company or its subsidiary in its product development efforts, submissions or reports to any Health Regulatory Agency that could reasonably be expected to require investigation, corrective action or enforcement action, except where such violation would not, singly or in the aggregate, result in a Material Adverse Effect.

(vv) *Health Care Products Manufacturing* . The manufacture of the Company's products by or, to the knowledge of the Company, on behalf of the Company is being conducted in compliance in all material respects with all applicable Health Care Laws, including, without limitation, the FDA's current good manufacturing practice regulations at 21 CFR Part 820, and, to the extent applicable, the respective counterparts thereof promulgated by other Health Regulatory Agencies. Except as disclosed in the Registration Statement, the Time of Sale Prospectus and the Prospectus, the Company has not had any manufacturing site (whether Company-owned or, to the knowledge of the Company, that of a third party manufacturer for the Company's products) subject to a Health Regulatory Agencies (including FDA) shutdown or import or export prohibition, nor received any FDA or other Health Regulatory Agency "warning letters," or "untitled letters" alleging or asserting material noncompliance with any applicable Health Care Laws, requests to make material changes to the Company's products, processes or operations, or similar correspondence or notice from the FDA or other Health Regulatory Agencies alleging or asserting material noncompliance with any applicable Health Care Laws, other than those that have been satisfactorily addressed and/or closed with the FDA or other Health Regulatory Agencies. To the Company's knowledge, neither the FDA nor any other Health Regulatory Agencies is considering such action.

(ww) *No Safety Notices* . (i) There have been no recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Company's products (" **Safety Notices** "), except as would not, singly or in the aggregate, result in a Material Adverse Effect, and (ii) to the Company's and its subsidiary's knowledge, there are no facts that would be reasonably likely to result in (x) a Safety Notice with respect to the Company's products or services, (y) a material change in labeling of any of the Company's products, or (z) a termination or suspension of marketing or testing of any of the Company's products, except, in each of cases (x), (y) or (z) such as would not reasonably be expected to have a Material Adverse Effect.

Any certificate signed by any officer of the Company or any of its subsidiaries and delivered to any Underwriter or to counsel for the Underwriters pursuant to this Agreement or otherwise in connection with the offering contemplated hereby shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 6 hereof, counsel to the Company and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 2. Purchase, Sale and Delivery of the Securities.

(a) *The Initial Securities* . On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company at the price set forth in Schedule A , the aggregate principal amount of Initial Securities set forth in Schedule A , plus any additional principal amount of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 11 hereof, subject to such adjustments as Merrill Lynch in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *The First Closing Date* . Delivery of certificates for the Initial Securities to be purchased by the Underwriters and payment therefor shall be made at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York (or such other place as may be agreed to by the Company and Merrill Lynch) at 9:00 a.m. New York time, on January 17, 2018, or such other time and date as may be agreed upon by the Company and Merrill Lynch (the time and date of such closing are called the " **First Closing Date** ").

(c) *The Option Securities; Option Closing Date* . In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, the Option Securities from the Company at the purchase price set forth in Schedule A . The option granted hereunder may be exercised at any time and from time to time in whole or in part upon notice by the Representative to the Company, which notice may be given at any time within 30 days from the date of this Agreement. Such notice shall set forth (i) the amount of Option Securities as to which the Underwriters are exercising the option and (ii) the time, date and place at which certificates for the Option Securities will be delivered (which time and date may be simultaneous with, but not earlier than, the First Closing Date; and in the event that such time and date are simultaneous with the First Closing Date, the term " **First Closing Date** " shall refer to the time and date of delivery of certificates for the Initial Securities and such Option Securities). Any such time and date of delivery, if subsequent to the First Closing Date, is called an " **Option Closing Date** " and shall be determined by the Representative and shall not be earlier than two nor later than seven full business days after delivery of such notice of exercise. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total principal amount of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name if such Underwriter bears to the total principal amount of Initial Securities, subject, in each case, to such adjustments as Merrill Lynch in its discretion shall make to ensure that any sales or purchases are in authorized denominations. The Representative may cancel the option at any time prior to its expiration by giving written notice of such cancellation to the Company.

(d) *Public Offering of the Securities* . The Representative hereby advise the Company that the Underwriters intend to offer for sale to the public, initially on the terms set forth in the Time of Sale Prospectus and the Prospectus, their respective portions of the Securities as soon after this Agreement has been executed as the Representative, in their sole judgment, have determined is advisable and practicable.

(e) *Payment for the Securities* . Payment for the Securities shall be made at the First Closing Date (and, if applicable, at each Option Closing Date) by wire transfer of immediately available funds to the order of the Company.

It is understood that the Representative has been authorized, for its own account and the accounts of the several Underwriters, to accept delivery of and receipt for, and make payment of the purchase price for, the Initial Securities and any Optional Securities the Underwriters have agreed to purchase. Merrill Lynch, individually and not as the Representative of the Underwriters, may (but shall not be obligated to) make payment for any Securities to be purchased by any Underwriter whose funds shall not have been received by the Representative by the First Closing Date or the applicable Option Closing Date, as the case may be, for the account of such Underwriter, but any such payment shall not relieve such Underwriter from any of its obligations under this Agreement.

(f) *Delivery of the Securities* . The Company shall deliver, or cause to be delivered, through the facilities of The Depository Trust Company (" **DTC** "), to the Representative, for the accounts of the several Underwriters, the Initial Securities at the First Closing Date, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The Company shall also deliver, or cause to be delivered, through the facilities of DTC, to the Representative for the accounts of the several Underwriters, the Optional Shares the Underwriters have agreed to purchase at the First Closing Date or the applicable Option Closing Date, as the case may be, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The Securities shall be registered in such names and denominations as the Representative shall have requested at least two full business days prior to the First Closing Date (or the applicable Option Closing Date, as the case may be). Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters.

Section 3. Additional Covenants . The Company further covenants and agrees with each Underwriter as follows:

(a) *Delivery of Registration Statement, Time of Sale Prospectus and Prospectus.* The Company shall furnish to you, without charge, two signed copies of the Registration Statement, any amendments thereto (including exhibits thereto) and shall furnish to you in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Securities, as many copies of the Time of Sale Prospectus,

the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) *Representative's Review of Proposed Amendments and Supplements.* Prior to amending or supplementing the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus or the Prospectus, the Company shall furnish to the Representative for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement without the Representative's consent. The Company shall file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) *Final Term Sheet; Free Writing Prospectuses.* The Company will prepare a final term sheet (the " **Final Term Sheet** "), in the form set forth in Schedule C hereto, reflecting the final terms of the Securities, in form and substance satisfactory to the Representative, and shall file such Final Term Sheet as an "issuer free writing prospectus" pursuant to Rule 433 prior to the close of business two business days after the date hereof; provided that the Company shall furnish the Representative with copies of any such Final Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representative or counsel to the Underwriters shall object. The Company shall furnish to the Representative for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed free writing prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company, and the Company shall not file, use or refer to any proposed free writing prospectus or any amendment or supplement thereto without the Representative's consent. The Company shall furnish to each Underwriter, without charge, as many copies of any free writing prospectus prepared by or on behalf of, or used by the Company, as such Underwriter may reasonably request. If at any time when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Securities (but in any event if at any time through and including the First Closing Date) there occurred or occurs an event or development as a result of which any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such time, not misleading, the Company shall promptly amend or supplement such free writing prospectus to eliminate or correct such conflict or so that the statements in such free writing prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such time, not misleading, as the case may be; *provided* , *however* , that prior to amending or supplementing any such free writing prospectus, the Company shall furnish to the Representative for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented free writing

prospectus, and the Company shall not file, use or refer to any such amended or supplemented free writing prospectus without the Representative's consent.

(d) *Filing of Underwriter Free Writing Prospectuses.* The Company shall not take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) *Amendments and Supplements to Time of Sale Prospectus* . If the Time of Sale Prospectus is being used to solicit offers to buy the Securities at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus so that the Time of Sale Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a prospective purchaser, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, including the Securities Act, the Company shall (subject to Section 3(b) and Section 3(c)) forthwith prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a prospective purchaser, not misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the information contained in the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law, including the Securities Act.

(f) *Securities Act Compliance* . After the date of this Agreement and continuing up to and including any time when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Securities (but in any event if at any time through and including the First Closing Date), the Company shall promptly advise the Representative in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus or the Prospectus, (iii) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any amendment or

supplement to any preliminary prospectus, the Time of Sale Prospectus or the Prospectus or of any order preventing or suspending the use of any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b), Rule 433 and Rule 430B, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission. If, after the date of this Agreement and during any time when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), the Company receives notice pursuant to Rule 401(g)(2) under the Securities Act from the Commission or otherwise ceases to be eligible to use the automatic shelf registration form, the Company shall promptly advise the Representative in writing of such notice or ineligibility and will (i) promptly filed a new registration statement or post-effective amendment on the proper form relating to the Securities, (ii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective by the Commission as soon as practicable and (iii) promptly notify the Representative in writing of such effectiveness.

(g) *Amendments and Supplements to the Prospectus and Other Securities Act Matters.* If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a purchaser, not misleading, or if in the opinion of the Representative or counsel for the Underwriters it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Section 3(b) and Section 3(c)) to promptly prepare, file with the Commission and furnish at its own expense to the Underwriters and to dealers, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law, including the Securities Act. Neither the Representative's consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Section 3(b) and Section 3(c).

(h) *Blue Sky Compliance* . The Company shall cooperate with the Representative and counsel for the Underwriters to qualify or register the Securities for sale under (or obtain exemptions from the application of) the state securities or blue sky

laws or Canadian provincial securities laws (or other foreign laws) of those jurisdictions designated by the Representative, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Securities. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Representative promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(i) *Use of Proceeds* . The Company shall apply the net proceeds from the sale of the Securities sold by it in the manner described under the caption "Use of Proceeds" in each Applicable Prospectus.

(j) *Transfer Agent* . The Company shall engage and maintain, at its expense, a registrar and transfer agent for its Common Stock.

(k) *Earnings Statement* . As soon as practicable, the Company will make generally available to its security holders and to the Representative an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement, which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(l) *Periodic Reporting Obligations* . Until the earlier of two years from the date hereof or the date on which the Company ceases to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file, on a timely basis, with the Commission and the Nasdaq Capital Market all reports and documents required to be filed under the Exchange Act.

(m) *Listing* . The Company will use its best efforts to list, subject to notice of issuance, the Securities on the Nasdaq Capital Market and to maintain the listing of the Common Stock on the Nasdaq Capital Market.

(n) *Company to Provide Copy of the Prospectus in Form that May be Downloaded from the Internet* . If requested by the Representative, the Company shall cause to be prepared and delivered, at its expense, within one business day from the effective date of this Agreement, to the Representative an "electronic Prospectus" to be used by the Underwriters in connection with the offering and sale of the Securities. As used herein, the term " **electronic Prospectus** " means a form of Time of Sale Prospectus, and any amendment or supplement thereto, that meets each of the following conditions: (i) it shall be encoded in an electronic format, satisfactory to the Representative, that may be transmitted electronically by Merrill Lynch to offerees and purchasers of the Securities; (ii) it shall disclose the same information as the paper Time of Sale

Prospectus, except to the extent that graphic and image material cannot be disseminated electronically, in which case such graphic and image material shall be replaced in the electronic Prospectus with a fair and accurate narrative description or tabular representation of such material, as appropriate; and (iii) it shall be in or convertible into a paper format or an electronic format, satisfactory to the Representative, that will allow investors to store and have continuously ready access to the Time of Sale Prospectus at any future time, without charge to investors (other than any fee charged for subscription to the Internet as a whole and for on-line time). The Company hereby confirms that it has included or will include in the Prospectus filed pursuant to EDGAR or otherwise with the Commission and in the Registration Statement at the time it was declared effective an undertaking that, upon receipt of a request by an investor or his or her representative, the Company shall transmit or cause to be transmitted promptly, without charge, a paper copy of the Time of Sale Prospectus.

(o) *Agreement Not to Offer or Sell Additional Shares* . During the period commencing on and including the date hereof and ending on and including the 60 th day following the date of this Agreement (as the same may be extended as described below, the " **Lock-up Period** "), the Company will not, without the prior written consent of the Representative (which consent may be withheld at the sole discretion of the Representative), directly or indirectly, sell (including, without limitation, any short sale), offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement or make a confidential submission under the Securities Act in respect of, any shares of Common Stock, options, rights or warrants to acquire shares of Common Stock or securities exchangeable or exercisable for or convertible into shares of Common Stock (other than as contemplated by this Agreement with respect to the Securities) or publicly announce the intention to do any of the foregoing; *provided* , *however* , that the Company may issue shares of Common Stock, options to purchase shares of Common Stock or restricted stock units representing shares of Common Stock (" **RSUs** "), or issue shares of Common Stock upon exercise of options or upon settlement of RSUs, pursuant to any stock option, stock bonus, stock purchase or other stock plan or arrangement described in each Applicable Prospectus, or issue shares of Common Stock upon exercise of outstanding warrants described in each Applicable Prospectus; and *provided* , *further* , that the Company may issue, sell or deliver shares of Common Stock or any securities convertible into, or exercisable or exchangeable for, shares of Common Stock in connection with any consulting agreement, acquisition or strategic investment (including without limitation any license, collaboration, joint venture, strategic alliance or partnership) as long as (x) the aggregate number of shares of Common Stock so issued, sold or delivered from the date of the Prospectus through and including the 60th day after the date of the Prospectus does not exceed 100,000 shares (subject to adjustment for stock splits and other similar events), and (y) the Company shall not file with the Commission during the Lock-up Period any registration statement to register such shares under the Securities Act, and (z) each recipient of shares of Common Stock agrees in a writing provided to Merrill Lynch to be bound by the terms of this Section 3(o).

(p) *Future Reports* . Until the earlier of two years from the date hereof or the date on which the Company ceases to be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will furnish to Merrill Lynch at Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Bryant Park, New York, NY 10036, Attention: Syndicate Department, with a copy to ECM Legal (i) as soon as practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, stockholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified public accountants; (ii) as soon as practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company mailed generally to holders of its capital stock.

(q) *Investment Limitation* . The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Securities, in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

(r) *No Stabilization or Manipulation; Compliance with Regulation M* . The Company will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Common Stock or any other reference security, whether to facilitate the sale or resale of the Securities or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M. If the limitations of Rule 102 of Regulation M (" **Rule 102** ") do not apply with respect to the Securities or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from Merrill Lynch (or, if later, at the time stated in the notice), the Company will, and shall cause each of its affiliates to, comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply.

(s) *Existing Lock-Up Agreements* . During the Lock-up Period, the Company will enforce all existing agreements between the Company and any of its security holders that prohibit the sale, transfer, assignment, pledge or hypothecation of any of the Company's securities. In addition, the Company will direct the transfer agent to place stop transfer restrictions upon any such securities of the Company that are bound by such existing "lock-up" agreements for the duration of the periods contemplated in such agreements, including, without limitation, "lock-up" agreements entered into by the Company's officers and directors pursuant to Section 6(i).

(t) *Commission Filing Fees.* The Company agrees to pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with the Rules 456(b) and 457(r) under the Securities Act.

Section 4. **Payment of Expenses** . The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Securities (including all printing and engraving costs) and the Common Stock issuable upon conversion thereof, (ii) all fees and expenses of the Trustee and all fees and expenses of the registrar and transfer agent of the Securities or the Common Stock issuable upon conversion of the Securities, (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Securities to the Underwriters, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Time of Sale Prospectus, the Prospectus, each free writing prospectus prepared by or on behalf of, used by, or referred to by the Company, and each preliminary prospectus, and all amendments and supplements thereto, and this Agreement, (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Underwriters in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Representative, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper," and any supplements thereto, advising the Underwriters of such qualifications, registrations and exemptions, *provided* such fees and expenses shall not exceed $10,000, (vii) the costs and expenses incurred by the Underwriters in connection with determining their compliance with the rules and regulations of FINRA related to the Underwriters' participation in the offering and distribution of the Securities, including any related filing fees and the legal fees of, and disbursements by, counsel to the Underwriters, *provided* such fees and expenses shall not exceed $10,000, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the Representative, employees and officers of the Company and of the Representative and any such consultants, and the cost of any aircraft chartered by the Company in connection with the road show, (ix) the fees and expenses associated with listing the the Common Stock issuable upon conversion of the Securities on the Nasdaq Capital Market, and (x) all other fees, costs and expenses of the nature referred to in Item 14 of Part II of the Registration Statement. Except as provided in this Section 4 or in Section 7, Section 9 or Section 10 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

Section 5. **Covenant of the Underwriters** . Each Underwriter, severally and not jointly, covenants with the Company not to take any action that would result in the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

Section 6. Conditions of the Obligations of the Underwriters. The obligations of the several Underwriters to purchase and pay for the Securities as provided herein on the First Closing Date and, with respect to the Option Securities, each Option Closing Date (or the First Closing Date, if such Option Securities are to be purchased on the First Closing Date) shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 1 hereof as of the date hereof and as of the First Closing Date as though then made and, with respect to the Option Securities, as of each Option Closing Date (or the First Closing Date, if such Option Securities are to be purchased on the First Closing Date) as though then made, to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

(a) *Accountants' Comfort Letter* . The Representative shall have received, on the date hereof, from BDO USA, LLP, independent registered public accountants for the Company (i) a letter dated the date hereof addressed to the Underwriters, in form and substance satisfactory to the Representative, containing statements and information of the type ordinarily included in accountant's "comfort letters" to underwriters, delivered according to Statement of Auditing Standards No. 72 (or any successor bulletin), with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement and the Time of Sale Prospectus, and each free writing prospectus, if any, which letter shall confirm that BDO USA, LLP is (I) an independent registered public accountant as required by the Securities Act, the Exchange Act and the rules of the PCAOB and (II) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Exchange Act; and (ii) an additional conformed copy of such letter for each of the other several Underwriters.

(b) *Compliance with Registration Requirements; No Stop Order; No Objection from FINRA.*

(i) the Company shall have filed the Prospectus with the Commission (including the information previously omitted from the Registration Statement pursuant to Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act;

(ii) no stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission;

(iii) if a filing has been made with FINRA, FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements; and

(iv) the Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(b)(1)(i) under the Securities Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Securities Act and, if

applicable, shall have updated the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(c) *No Material Adverse Change or Ratings Agency Change* . For the period from and after the date of this Agreement and through and including the First Closing Date and, with respect to any Option Securities the purchase and sale of which occur after the First Closing Date, each Option Closing Date:

(i) in the judgment of the Representative there shall not have occurred any Material Adverse Change; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" as that term is used in Rule 15c3-1(c)(2)(vi(F) under the Exchange Act.

(d) *Opinion of Counsel for the Company* . On each of the First Closing Date and each Option Closing Date, the Representative shall have received the opinion of K&L Gates LLP, counsel for the Company, dated as of such date, the form of which is attached as Exhibit A .

(e) *Opinion of Intellectual Property Counsel for the Company* . On each of the First Closing Date and each Option Closing Date, the Representative shall have received the opinion of Casimir Jones, S.C., counsel for the Company with respect to intellectual property matters, dated as of such date, the form of which is attached as Exhibit B .

(f) *Opinion of Counsel for the Underwriters* . On each of the First Closing Date and each Option Closing Date, the Representative shall have received the opinion of Shearman & Sterling LLP, counsel for the Underwriters in connection with the offer and sale of the Securities, in form and substance satisfactory to the Underwriters, dated as of such date.

(g) *Officers' Certificate* . On each of the First Closing Date and each Option Closing Date, the Representative shall have received a written certificate executed by the Chief Executive Officer or President of the Company and the Chief Financial Officer of the Company, dated as of such date, to the effect set forth in Section 6(b)(ii) and further to the effect that:

(i) for the period from and including the date of this Agreement through and including such date, there has not occurred any Material Adverse Change;

(ii) the representations, warranties and covenants of the Company set forth in Section 1 of this Agreement are true and correct with the same force and effect as though expressly made on and as of such date; and

(iii) the Company has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such date.

(h) *CFO Certificate* . On each of the date hereof and the First Closing Date and each Option Closing Date, the Representative shall have received a written certificate executed by the Chief Financial Officer of the Company to the effect set forth in Exhibit E .

(i) *Bring-down Comfort Letter* . On each of the First Closing Date and each Option Closing Date, the Representative shall have received from BDO USA, LLP, independent registered public accountants for the Company (i) a letter dated such date, in form and substance satisfactory to the Representative, which letter shall (a) reaffirm the statements made in the letter furnished by them pursuant to Section 6(a), except that the specified date referred to therein for the carrying out of procedures shall be no more than three business days prior to the First Closing Date or the applicable Option Closing Date, as the case may be; and (b) cover certain financial information contained in the Prospectus; and (ii) an additional conformed copy of such accountants' letter for each of the other several Underwriters.

(j) *Lock-Up Agreement from Certain Persons.* On or prior to the date hereof, the Company shall have furnished to the Representative an agreement in the form of Exhibit C hereto from each of the persons listed on Exhibit D hereto, and each such agreement shall be in full force and effect on each of the First Closing Date and each Option Closing Date.

(k) *Additional Documents* . On or before each of the First Closing Date and each Option Closing Date, the Representative and counsel for the Underwriters shall have received such information, documents and opinions as they may reasonably request for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as contemplated herein and in connection with the other transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to the Representative.

If any condition specified in this Section 6 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representative by notice to the Company at any time on or prior to the First Closing Date and, with respect to the Option Securities, at any time on or prior to the applicable Option Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 4, Section 7, Section 9 and Section 10 shall at all times be effective and shall survive such termination.

Section 7. **Reimbursement of Underwriters' Expenses** . If this Agreement is terminated by the Representative pursuant to Section 6 or Section 12, or if the sale to the Representative of the Securities on the First Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Representative and the other Underwriters (or such Underwriters as have terminated this Agreement with respect to themselves), severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Representative and the Underwriters in connection with the proposed purchase and the offering and sale of the Securities, including but not limited to fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

Section 8. **Effectiveness of this Agreement** . This Agreement shall not become effective until the execution and delivery of this Agreement by the parties hereto.

Section 9. **Indemnification** .

(a) *Indemnification of the Underwriters* . The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the Securities Act), officers and employees, and each person, if any, who controls any Underwriter within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Securities have been offered or sold or at common law or otherwise (including in settlement of any litigation), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, or the Prospectus (or any amendment or supplement to the foregoing), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to reimburse each Underwriter and each such officer, employee and controlling person for any and all expenses (including the fees and disbursements of counsel in accordance with Section 9(c)) as such expenses are reasonably incurred by such Underwriter or such officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided* , *however* , that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information relating to any Underwriter furnished to the Company by the Representative

expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any such free writing prospectus or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information furnished by the Representative to the Company consists of the information described in Section 9(b) below. The indemnity agreement set forth in this Section 9(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) *Indemnification of the Company, its Directors and Officers* . Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus the Time of Sale Prospectus, any free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, or the Prospectus (or any amendment or supplement to the foregoing), or arises out of or is based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, such preliminary prospectus, the Time of Sale Prospectus, such free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, the Prospectus (or any amendment or supplement to the foregoing), in reliance upon and in conformity with written information relating to any Underwriter furnished to the Company by the Representative expressly for use therein; and to reimburse the Company, or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Representative and the other Underwriters have furnished to the Company expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement to the foregoing) are the statements set forth in the first paragraph under the title “Commissions and Discounts”, the third and fourth sentence under the title “New Issue of Notes”, the first and second paragraph under the title “Price Stabilization, Short Positions” and the first sentence under the title “Electronic Distribution”, in each case under the caption “Underwriting” in the Company’s Time of Sale Prospectus and the Prospectus relating to the offering of the Securities. The

indemnity agreement set forth in this Section 9(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) *Notifications and Other Indemnification Procedures* . Promptly after receipt by an indemnified party under this Section 9 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 9, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 9 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; *provided* , *however* , that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 9 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the Representative (in the case of counsel for the indemnified parties referred to in Section 9(a) above) or by the Company (in the case of counsel for the indemnified parties referred to in Section 9(b) above)) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) *Settlements* . The indemnifying party under this Section 9 shall not be liable for any settlement of any proceeding effected without its written consent, but if

settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 9(c) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and does not include an admission of fault or culpability or a failure to act by or on behalf of such indemnified party.

Section 10. Contribution . If the indemnification provided for in Section 9 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth on the front cover page of the Prospectus bear to the aggregate initial public offering price of the Securities as set forth on such cover. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set

forth in Section 9(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 9(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 10; *provided* , *however* , that no additional notice shall be required with respect to any action for which notice has been given under Section 9(c) for purposes of indemnification.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 10 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purposes) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 10.

Notwithstanding the provisions of this Section 10, no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions received by such Underwriter in connection with the Securities underwritten by it and distributed to the public. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 10 are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their respective names on Schedule A . For purposes of this Section 10, each officer and employee of an Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company with the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 11. Default of One or More of the Several Underwriters . If, on the First Closing Date or the applicable Option Closing Date, as the case may be, any one or more of the several Underwriters shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on such date, and the aggregate number of Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase does not exceed 10% of the aggregate number of the Securities to be purchased on such date, the Representative may make arrangements satisfactory to the Company for the purchase of such Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such date, the other Underwriters shall be obligated, severally and not jointly, in the proportions that the number of Initial Securities set forth opposite their respective names on Schedule A bears to the aggregate number of Initial Securities set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as may be specified by the Representative with the consent of the non-defaulting Underwriters, to purchase the Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date. If, on the First Closing Date or the applicable Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Securities and the aggregate number of Securities with respect to which such default occurs exceeds 10% of the aggregate number of Securities to be purchased on such date, and arrangements satisfactory to the Representative and the Company for the purchase of such Securities are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party, except that the provisions of Section 4,

Section 7, Section 9 and Section 10 shall at all times be effective and shall survive such termination. In any such case either the Representative or the Company shall have the right to postpone the First Closing Date or the applicable Option Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Registration Statement and the Prospectus or any other documents or arrangements may be effected.

As used in this Agreement, the term " **Underwriter** " shall be deemed to include any person substituted for a defaulting Underwriter under this Section 11. Any action taken under this Section 11 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

Section 12. Termination of this Agreement . Prior to the purchase of the Initial Securities by the Underwriters on the First Closing Date, this Agreement may be terminated by the Representative by notice given to the Company if at any time (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq Capital Market, or trading in securities generally on either the Nasdaq Stock Market or the New York Stock Exchange shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges; (ii) a general banking moratorium shall have been declared by any of federal, New York, Delaware or California authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representative is material and adverse and makes it impracticable to market the Securities in the manner and on the terms described in the Time of Sale Prospectus or the Prospectus or to enforce contracts for the sale of securities; (iv) in the judgment of the Representative, there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representative may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 12 shall be without liability on the part of (a) the Company to any Underwriter, except pursuant to Section 4 or Section 7 hereof or (b) any Underwriter to the Company; *provided* , *however* , that the provisions of Section 9 and Section 10 shall at all times be effective and shall survive such termination.

Section 13. No Advisory or Fiduciary Relationship . The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters), and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set

forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate .

Section 14. Representations and Indemnities to Survive Delivery . The respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement.

Section 15. Notices . All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Underwriter:	Merrill Lynch, Pierce, Fenner & Smith Incorporated One Bryant Park New York, NY 10036 Facsimile: (646) 855-3073 Attention: Syndicate Department, with a copy to ECM Legal, Facsimile: (212) 230-8730)
with a copy to:	Shearman & Sterling LLP 599 Lexington Avenue New York, New York, 10022 Facsimile: (646) 848-5313 Attention: Ilir Mujalovic
If to the Company	Exact Sciences Corporation 441 Charmany Drive Madison, Wisconsin 53719 Facsimile: (608) 284-5711 Attention: Scott Coward
with a copy to:	K&L Gates LLP 214 North Tryon Street, Suite 4700 Charlotte, North Carolina 28202 Facsimile: (704) 353-3140 Attention: Mark Busch

Any party hereto may change the address for receipt of communications by giving written notice to the others.

Section 16. **Successors** . This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Underwriters pursuant to Section 11 hereof, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 9 and Section 10, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Securities as such from any of the Underwriters merely by reason of such purchase.

Section 17. **Partial Unenforceability** . The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 18. **Governing Law Provisions** . This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the " **Specified Courts** "), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court, as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

Section 19. **General Provisions** . This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 9 and the contribution provisions of Section 10, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Section 9 and Section 10 hereof fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its

business in order to assure that adequate disclosure has been made in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, each free writing prospectus and the Prospectus (and any amendments and supplements to the foregoing), as contemplated by the Securities Act and the Exchange Act.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the initial purchasers are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the initial purchasers to properly identify their respective clients.

[*Rest of page intentionally left blank*]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

EXACT SCIENCES CORPORATION

By: /s/ Kevin Conroy
Name: Kevin T. Conroy
Title: President and CEO

The foregoing Underwriting Agreement is hereby confirmed and accepted by the Representative in New York, New York as of the date first above written.

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ Adam Chazan
Name: Adam Chazan
Title: Managing Director

As Representative of the several Underwriters named in Schedule A hereto.

SCHEDULE A

The initial public offering price of the Securities shall be 98.75% of the principal amount thereof, plus accrued interest, if any, from the date of issuance.

The purchase price to be paid by the Underwriter for the Securities shall be 97.5% of the principal amount thereof.

The interest rate on the Securities shall be 1.0% per annum.

The initial conversion rate for the Securities will be 13.2569 shares of Common Stock per $1,000 principal amount of Securities (equivalent to an initial conversion price of approximately $75.43 per share of Common Stock).

Name of Underwriter	Principal Amount of Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$ 540,000,000
Cowen and Company, LLC	$ 18,000,000
William Blair & Company, L.L.C.	$ 18,000,000
Canaccord Genuity Inc.	$ 12,000,000
Leerink Partners LLC	$ 12,000,000
Total	$ 600,000,000

SCHEDULE B

Free Writing Prospectuses Included in the Time of Sale Prospectus

Final Term Sheet

SCHEDULE C

Final Term Sheet

Pricing Term Sheet
Dated January 11, 2018

Filed pursuant to Rule 433
Registration Statement No. 333-218535
Supplementing the Preliminary
Prospectus Supplement dated January 11, 2018
(the "Preliminary Prospectus Supplement")

Exact Sciences Corporation
Offering of

$600,000,000 Aggregate Principal Amount of
1.0% Convertible Senior Notes due 2025

The information in this pricing term sheet should be read together with the Preliminary Prospectus Supplement, including the documents incorporated by reference therein and the related base prospectus (the "Base Prospectus"), dated January 11, 2018, filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended. This pricing term sheet supplements and, to the extent of a conflict, supersedes the information in the Preliminary Prospectus Supplement, the Base Prospectus and the documents incorporated by reference therein. As used in this pricing term sheet, "we," "our" and "us" refer to Exact Sciences Corporation and not to its subsidiaries.

Issuer:	Exact Sciences Corporation, a Delaware corporation.
Notes:	1.0% Convertible Senior Notes due 2025 (the "Notes").
Principal Amount:	$600,000,000 (or, if the underwriter fully exercises its option to purchase additional Notes, $690,000,000) aggregate principal amount of Notes.
Ticker / Exchange for Common Stock:	EXAS / NASDAQ Capital Market ("NASDAQ").
Last Reported Sale Price of Common Stock on NASDAQ on January 11, 2018:	$55.06 per share of our common stock (the "Common Stock").
Maturity Date:	January 15, 2025, unless earlier repurchased or converted.
Interest:	1.0% per year, payable semi-annually in arrears on January 15 and July 15 of each year, beginning July 15, 2018.
Conversion Premium:	Approximately 37.0% above the Last Reported Sale Price of Common Stock on NASDAQ Capital Market on January 11, 2018.
Initial Conversion Price:	Approximately $75.43 per share of Common Stock, subject to adjustment.
Initial Conversion Rate:	13.2569 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment.
Fundamental Change Repurchase Right of Holders:	If we undergo a "fundamental change" (as defined in the Preliminary Prospectus Supplement under "Description of the Notes—Fundamental Change Put"), each holder of the Notes will have the option to require us to repurchase all or any portion of such holder's Notes. The fundamental change repurchase price will be 100% of the principal amount of the Notes to be repurchased plus any accrued and unpaid interest to, but not including, the fundamental change repurchase date. Any Notes repurchased by us will be paid in cash.
CUSIP Number:	30063P AA3
ISIN:	US30063PAA30
Pricing Date:	January 11, 2018.
Trade Date:	January 12, 2018.

Settlement Date:	January 17, 2018.
Denomination:	$1,000 and integral multiples thereof
Price at Issuance:	98.75%, plus accrued interest, if any, from the Settlement Date
Use of Proceeds:	We estimate that the gross proceeds from the sale of the Notes will be $592,500,000. We intend to use the net proceeds from this offering for general corporate and working capital purposes. See “Use of Proceeds” in the Preliminary Prospectus Supplement.
Sole Book-Running Manager:	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Adjustment to Conversion Rate Upon a Make-Whole Fundamental Change:	If the effective date (as defined in the Preliminary Prospectus Supplement) of a make-whole fundamental change (as defined in the Preliminary Prospectus Supplement) occurs prior to the maturity date of the Notes and a holder elects to convert its Notes in connection with such make-whole fundamental change, we will increase the conversion rate by a number of additional shares. If holders of our Common Stock receive only cash in a make-whole fundamental change, the price paid (or deemed paid) per share will be the cash amount paid per share. Otherwise, the price paid (or deemed paid) per share will be equal to the average of the closing sale prices of our Common Stock over the five trading day period ending on, and including, the trading day immediately preceding the effective date of such make-whole fundamental change. The following table shows what the make-whole premium would be for each stock price and effective date set forth below, expressed as additional shares of Common Stock per $1,000 principal amount of Notes.

	Stock Price												
Effective date	**$55.06**	**$60.00**	**$67.00**	**$75.43**	**$85.00**	**$100.00**	**$120.00**	**$140.00**	**$160.00**	**$180.00**	**$200.00**	**$250.00**	**$325.00**
January 17, 2018	4.9051	4.1763	3.3763	2.6660	2.0835	1.4688	0.9716	0.6716	0.4791	0.3496	0.2589	0.1254	0.0104
January 15, 2019	4.9051	4.1495	3.3207	2.5906	1.9978	1.3808	0.8918	0.6036	0.4226	0.3033	0.2214	0.1039	0.0089
January 15, 2020	4.9051	4.1235	3.2579	2.5027	1.8969	1.2776	0.7997	0.5264	0.3598	0.2528	0.1811	0.0816	0.0069
January 15, 2021	4.9051	4.0745	3.1643	2.3798	1.7612	1.1440	0.6853	0.4342	0.2873	0.1963	0.1372	0.0587	0.0049
January 15, 2022	4.9051	3.9833	3.0172	2.1989	1.5693	0.9648	0.5410	0.3244	0.2053	0.1354	0.0920	0.0370	0.0030
January 15, 2023	4.9051	3.8285	2.7825	1.9210	1.2865	0.7184	0.3613	0.1997	0.1196	0.0762	0.0505	0.0193	0.0014
January 15, 2024	4.9051	3.5832	2.3855	1.4513	0.8351	0.3767	0.1553	0.0776	0.0451	0.0288	0.0194	0.0074	0.0005
January 15, 2025	4.9051	3.4097	1.6685	0.0004	—	—	—	—	—	—	—	—	—

The exact stock price and effective date may not be set forth in the table above, in which case, if the stock price is:

- between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares by which the conversion rate will be increased will 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 effective dates based on a 360-day year;
- greater than $325.00 per share (subject to adjustment in the same manner and at the same time as the stock prices in the table above), we will not increase the conversion rate;
- less than $55.06 per share (subject to adjustment in the same manner and at the same time as the stock prices in the table above), we will not increase the conversion rate.

Notwithstanding the foregoing, in no event will the total number of shares of our Common Stock issuable upon conversion exceed 18.1620 shares per $1,000 principal amount of Notes, subject to adjustment in the same manner and at the same time as the conversion rate.

* * *

The issuer has filed a registration statement including a prospectus and a prospectus supplement with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus and prospectus supplement in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may obtain these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the issuer, the underwriter or any dealer participating in the offering will arrange to send you the prospectus and the prospectus supplement if you request them by calling BofA Merrill Lynch at 1-800-294-1322 .

Exhibit 4.1

EXACT SCIENCES CORPORATION

INDENTURE

Dated as of January 17, 2018

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Reconciliation and tie between Indenture, dated as of January 17, 2018, and the Trust Indenture Act of 1939, as amended.

Trust Indenture Act of 1939 Section	Indenture Section
310(a)(1)	6.11
(a)(2)	6.11
(a)(3)	TIA
(a)(4)	Not Applicable
(a)(5)	TIA
(b)	6.9; 6.11; TIA
311(a)	TIA
(b)	TIA
312(a)	6.7
(b)	TIA
(c)	TIA
313(a)	6.6; TIA
(b)	TIA
(c)	6.6; TIA
(d)	6.6
314(a)	9.6; 9.7; TIA
(b)	Not Applicable
(c)(1)	1.2
(c)(2)	1.2
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.2
(f)	TIA
315(a)	TIA
(b)	6.5
(c)	6.1
(d)(1)	TIA
(d)(2)	TIA
(d)(3)	TIA
(e)	TIA

316(a)(1)(A)	5.8
(a)(1)(B)	5.7
(b)	5.2; 5.10
(c)	TIA
317(a)(1)	5.3
(a)(2)	5.4
(b)	9.3
318(a)	1.11
(b)	TIA
(c)	1.11; TIA

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

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INDENTURE, dated as of January 17, 2018, between Exact Sciences Corporation, a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and U.S. Bank National Association, as trustee, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness ("Securities") to be issued in one or more series as herein provided.

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the Holders of the Securities or of any series thereof:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.1. DEFINITIONS . (a) For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and

(4) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"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 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" means any Paying Agent or Registrar.

"Authenticating Agent" means any authenticating agent appointed by the Trustee pursuant to Section 6.13.

"Board" or "Board of Directors" means the Board of Directors of the Company or any duly authorized committee thereof to act on behalf of the Board.

"Board Resolution" means a copy of one or more resolutions of the Board of Directors, certified by the Corporate 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 the certificate.

"Business Day", when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, means, unless otherwise specified with respect to any Securities pursuant to Section 3.1, each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or particular location are authorized or required by law to be closed, except as may otherwise be provided in the form of Security of any particular series pursuant to the provisions of this Indenture.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the shares of common stock, $0.01 par value per share, of the Company.

"Company" means the party named as the Company in the first paragraph of this Indenture until a successor shall have become such pursuant to the applicable provisions of this Indenture, and thereafter means such successors.

"Company Order" and "Company Request" mean, respectively, a written order or request signed in the name of the Company by the President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer or the Corporate Secretary of the Company.

"Corporate Trust Office" means the corporate trust office of the Trustee at which at any particular time this Indenture shall be principally administered, which office at the date hereof is located at 214 N. Tryon Street, 27th Floor, Charlotte, NC 28202 Attention: Exact Sciences Corporation Administrator.

"Currency unit", for all purposes of this Indenture, shall include any composite currency.

"Default" means any event which is, or after notice or passage of time, or both, would be, an Event of Default.

"Depository", when used with respect to the Securities of or within any series issuable or issued in whole or in part in global form, means the Person designated as Depository by the Company pursuant to Section 3.1 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter shall mean or include each Person which is then a Depository hereunder, and if at any time there is more than one such Person, shall be a collective reference to such Persons.

"Dollar" or "$" means the coin or currency of the United States as at the time of payment is legal tender for the payment of public and private debts.

"Euro" means the lawful currency of the participating member states of the European Union that adopt a single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union signed February 7, 1992.

"Foreign Currency" shall mean any currency issued by the government or governments of one or more countries other than the United States or by any recognized confederation or association of such governments and shall include the Euro.

"Government Obligations" means securities which are (i) direct obligations of the United States or, if specified as contemplated by Section 3.1, the government which issued the currency in which the Securities of a particular series are payable, for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States or, if specified as contemplated by Section 3.1, such government which issued the foreign currency in which the Securities of such series are payable, for the payment of which the full faith and credit of the United States or such other government is pledged (whether by guaranty or otherwise), which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation evidenced by such depository receipt.

"Holder" means a person in whose name a Registered Security is registered on the Register.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively; provided, however, that if at any time more than one Person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities, "Indenture" shall mean, with respect to such series of Securities for which any such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Trustee, but to which such Person, as such Trustee, was not a party; provided further that in the event that this indenture is supplemented or amended by one or more indentures supplemental hereto which are only applicable to certain series of Securities, the

term “Indenture” for a particular series of Securities shall only include the supplemental indentures applicable thereto.

“Indexed Security” means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

“Interest”, when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Interest Payment Date”, when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Maturity”, when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“Officer” means the President, Chairman of the Board, the Chief Executive Officer, the Chief Science Officer, the Chief Operating Officer, the Chief Financial Officer, any Vice President (whether or not designated by a number or numbers or word or words added before the title “Vice President”), the Treasurer, the Controller, General Counsel, or the Secretary of the Company.

“Officer’s Certificate” means a certificate signed by an Officer of the Company.

“Opinion of Counsel” means a written opinion of legal counsel, who may be, without limitation, (a) an employee of the Company, or (b) outside counsel designated by the Company.

“Original Issue Discount Security” means any Security which provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

“Outstanding”, when used with respect to Securities of any series, means, as of the date of determination, all Securities of such series theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities, or portions thereof, for whose payment or redemption money or Government Obligations in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provisions therefor satisfactory to the Trustee have been made;

(iii) Securities, except to the extent provided in Sections 4.4 and 4.5, with respect to which the Company has effected defeasance and/or covenant defeasance as provided in Article IV; and

(iv) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that unless otherwise provided with respect to Securities of any series pursuant to Section 3.1, in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, or whether sufficient funds are available for redemption or for any other purpose, and for the purpose of making the calculations required by section 313 of the Trust Indenture Act or are present at a meeting of Holders for quorum purposes, (w) the principal amount of any Original Issue Discount Securities that may be counted in making such determination or calculation and that shall be deemed to be Outstanding for such purpose shall be equal to the amount of principal thereof that would be (or shall have been declared to be) due and payable, at the time of such determination, upon a declaration of acceleration of the maturity thereof pursuant to Section 5.2, (x) the principal amount of any Security denominated in one or more Foreign Currencies or currency units that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the Dollar equivalent, determined as of the date such Security is originally issued by the Company as set forth in an Exchange Rate Officer's Certificate delivered to the Trustee, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent, determined as of such date of original issuance, of the amount determined as provided in clause (w) above) of such Security, (y) unless otherwise provided with respect to such Security pursuant to Section 3.1, the principal amount of any Indexed Security that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, and (z) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, or determination as to the presence of a quorum, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of, premium, if any, or interest and any other payments on all or any of the series of Securities on behalf of the Company.

"Periodic Offering" means an offering of Securities of a series from time to time the specific terms of which such Securities, including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the Maturity thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company upon the issuance of such Securities.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

"Place of Payment", when used with respect to the Securities of or within any series, means the place or places where the principal of, premium, if any, and interest and any other payments on such Securities are payable as specified as contemplated by Sections 3.1 and 9.2.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Preferred Stock" as applied to the capital stock of the Company means capital stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of the Company, over shares of Common Stock of such corporation.

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", when used with respect to any Security to be redeemed, in whole or in part, means the price at which it is to be redeemed pursuant to this Indenture.

"Registered Security" means any Security issued hereunder and registered as to principal and interest in the Register.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of or within any series means the date specified for that purpose as contemplated by Section 3.1, which date shall be, unless otherwise specified pursuant to Section 3.1, the fifteenth day preceding such Interest Payment Date, whether or not such day shall be a Business Day.

"Responsible Officer", when used with respect to the Trustee, shall mean any senior vice president, vice president, any assistant vice president or assistant secretary working in its corporate trust department and assigned responsibility for this engagement, or any other officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, working in its corporate trust department and assigned responsibility for this engagement, or to whom any corporate trust matter relating to the Indenture or the Securities is referred because of his knowledge of and familiarity with a particular subject.

"Security" or "Securities" has the meaning stated in the first recital of this Indenture and more particularly means a Security or Securities of the Company issued, authenticated and delivered under this Indenture.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

"Stated Maturity", when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Subsidiary" means any Person of which the Company at the time owns or controls, directly or indirectly, more than 50% of the shares of outstanding stock or other equity interests having general voting power under ordinary circumstances to elect a majority of the Board of Directors, managers or trustees, as the case may be, of such Person (irrespective of whether or not at the time stock of any other class or classes or other equity interests of such corporation shall have or might have voting power by reason of the happening of any contingency).

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, except as provided in Section 8.3.

"Trustee" means the party named as such in the first paragraph of this Indenture until a successor Trustee replaces it pursuant to the applicable provisions of this Indenture, and thereafter means such successor Trustee and if, at any time, there is more than one Trustee, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of that series.

"United States" means, unless otherwise specified with respect to the Securities of any series as contemplated by Section 3.1, the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"U.S. Person" means, unless otherwise specified with respect to the Securities of any series as contemplated by Section 3.1, an individual citizen or resident of the United States, a corporation created or organized in or under the laws of the United States, any State thereof or the District of Columbia, or a partnership, estate or trust treated as a domestic partnership, estate or trust for United States federal income tax purposes.

(b) The following terms shall have the meanings specified in the Sections referred to opposite such term below:

Term	Section
"Act"	1.4(a)
"Bankruptcy Law"	5.1
"Component Currency"	3.11(h)
"Conversion Date"	3.11(d)

“Conversion Event”	3.11(h)
“Custodian”	5.1
“Defaulted Interest”	3.7(b)
“Election Date”	3.11(h)
“Event of Default”	5.1
“Exchange Rate Agent”	3.11(h)
“Exchange Rate Officer’s Certificate”	3.11(h)
“Market Exchange Rate”	3.11(h)
“Register”	3.5
“Registrar”	3.5
“Specified Amount”	3.11(h)
“Valuation Date”	3.11(c)

Section 1.2. COMPLIANCE CERTIFICATES AND OPINIONS . 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 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.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 2.3) shall include:

(1) a statement that the individual signing such certificate or opinion has read such condition or covenant and any definitions in this Indenture that are used in such certificate or opinion;

(2) 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;

(3) 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 condition or covenant has been complied with; and

(4) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

Section 1.3. FORM OF DOCUMENTS DELIVERED TO TRUSTEE . In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such

Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows that the certificate or opinion or representations as to such matters are erroneous.

Any certificate or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company, unless such officer or counsel, as the case may be, knows that the certificate or opinions or representations as to such accounting matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.4. ACTS OF HOLDERS . (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by 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 shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(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 ownership of Registered Securities shall be proved by the Register (as defined in Section 3.5 below).

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security 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 Security.

(e) If the Company shall solicit from the Holders of any series any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders of such series entitled to give such request, demand, authorization, direction, notice, consent, 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, waiver or other Act may be given before or after such record date, but only the Holders of such series of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Securities of such series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities of such series shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless taken on or prior to the applicable Expiration Date (as defined below) by Holders of the requisite amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite amount of Outstanding Securities of any series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

With respect to any record date set pursuant to this Section 1.4, the Company may designate any date as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the Trustee, and to each Holder of Securities of the applicable series in the manner set forth in Section 1.6 on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date pursuant to this Section, the Company shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

(f) Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(g) The Company and the Trustee may make reasonable rules for action by or at a meeting of Holders.

Section 1.5. NOTICES, ETC., TO TRUSTEE AND COMPANY . Any request, demand, authorization, direction, notice, consent, 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:

if to the Company:

Exact Sciences Corporation
441 Charmany Drive,
Madison WI, 53719
Attention: General Counsel

if to the Trustee:

U.S. Bank National Association
214 N. Tryon Street, 27th Floor,
Charlotte, NC 28202
Attention: Exact Sciences Corporation Administrator

Notices to the Trustee are deemed given only upon actual receipt by the Trustee.

The Company or the Trustee by notice to the other may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

Any notice or communication shall be in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery.

Section 1.6. NOTICE TO HOLDERS; WAIVER . Where this Indenture provides for notice to Holders of any event, if any of the Securities affected by such event are Registered Securities, such notice to the Holders thereof shall be sufficiently given (unless otherwise herein or in the terms of such Securities expressly provided) if in writing and mailed, first-class postage prepaid, to each such Holder affected by such event, at his address as it appears in the Register, within the time prescribed for the giving of such notice; provided that notices given to Holders of Securities in global form may be given electronically through the facilities of the Depository.

In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders of Registered Securities as provided herein. In any case where notice is given to Holders by publication, neither the failure to publish such notice, nor any defect in any notice so published, shall affect the sufficiency of such notice with respect to the sufficiency of any notice to Holders of Registered Securities given as provided herein. Any notice mailed to a Holder in the manner herein prescribed shall be

conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice.

If by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice as provided above, then such notification as shall be made with the approval of the Trustee (such approval not to be unreasonably withheld) shall constitute a sufficient notification for every purpose hereunder. If it is impossible or, in the opinion of the Trustee, impracticable to give any notice by publication in the manner herein required, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of such notice.

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

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 equivalent of such notice. Waivers of notice by 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.

Section 1.7. HEADINGS AND TABLE OF CONTENTS . The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.8. SUCCESSOR AND ASSIGNS . All covenants and agreements in this Indenture by the Company shall bind its successor and assigns, whether so expressed or not.

Any act or proceeding that is required or permitted by any provision of this Indenture and that is authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the successor or assign of the Company.

Section 1.9. SEPARABILITY . In case any provision of this Indenture or any Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.10. BENEFITS OF INDENTURE . Nothing in this Indenture or in any Securities, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Agent and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.11. GOVERNING LAW . UNLESS OTHERWISE PROVIDED WITH RESPECT TO ANY SECURITIES OF ANY SERIES PURSUANT TO SECTION 3.1, THIS INDENTURE AND THE SECURITIES APPERTAINING THERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY

AND PERFORMANCE. This Indenture is subject to the Trust Indenture Act and if any provision hereof limits, qualifies or conflicts with a provision included in this Indenture which is required by the Trust Indenture Act, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified, or to be excluded, as the case may be, whether or not such provision of this Indenture refers expressly to such provision of the Trust Indenture Act.

Section 1.12. WAIVER OF JURY TRIAL . EACH OF THE COMPANY, THE TRUSTEE AND EACH HOLDER (BY ITS ACCEPTANCE OF ANY SECURITY) 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 SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY. EACH OF THE COMPANY, THE TRUSTEE AND EACH HOLDER (BY ITS ACCEPTANCE OF ANY SECURITY) HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR U.S. FEDERAL COURT IN THE CITY OF NEW YORK AND COUNTY OF NEW YORK IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE AND THE SECURITIES, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, JURISDICTION OF THE AFORESAID COURTS.

Section 1.13. LEGAL HOLIDAYS . Unless otherwise provided with respect to any Security or Securities pursuant to Section 3.1, in any case where any Interest Payment Date, Redemption Date, sinking fund payment date, Stated Maturity or Maturity or other payment date of any Security shall not be a Business Day at any Place of Payment, then, notwithstanding any other provision of this Indenture or any Security, payment of principal, premium, if any or interest or other payments need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on such date; provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, sinking fund payment date, Stated Maturity or Maturity or other payment date, as the case may be.

Section 1.14. NO RECOURSE AGAINST OTHERS . No past, present or future director, officer, employee, agent, member, manager, trustee or stockholder, as such, of the Company or any successor Person shall have any liability for any obligations of the Company or any successor Person, either directly or through the Company or any successor Person, under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation, whether by virtue of any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise. By accepting a Security, each Holder agrees to the provisions of this Section 1.14 and waives and releases all such liability. Such waiver and release shall be part of the consideration for the issue of the Securities.

ARTICLE II

SECURITY FORMS

Section 2.1. FORMS GENERALLY . The Securities of each series shall be in substantially such form as shall be established in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as the Company may deem appropriate or as may be required to comply with any applicable law, rule or regulation or with the rules or usage of any securities exchange or Depository therefor or as may, consistently herewith, be determined by the officers executing such Securities as evidenced by their execution of the Securities. If temporary Securities of any series are issued as permitted by Section 3.4, the form thereof also shall be established as provided in the preceding sentence.

The definitive Securities shall be typeset, printed, lithographed or engraved on steel engraved borders or may be produced in any other manner or medium, all as determined by the officers executing such Securities as evidenced by their execution of such Securities.

Section 2.2. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION . Subject to Section 6.13 (as applicable to any Authenticating Agent), the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the [Securities] [of the series designated herein and] referred to in the within-mentioned Indenture.

U.S. Bank National Association, as Trustee

Dated:

By: _____

AUTHORIZED SIGNATORY

Section 2.3. SECURITIES IN GLOBAL FORM . If Securities of or within a series are issuable in whole or in part in global form, any such Security may provide that it shall represent the aggregate or specified amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced or increased to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby, shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Trustee pursuant to Section 3.3 or 3.4. Subject to the provisions of Section 3.3 and, if applicable, Section 3.4, the Trustee shall deliver and redeliver any security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. Any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing

but need not comply with Section 1.2 hereof and need not be accompanied by an Opinion of Counsel.

The provisions of the last paragraph of Section 3.3 shall apply to any Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee such Security in global form together with written instructions (which need not comply with Section 1.2 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last paragraph of Section 3.3.

Notwithstanding the provisions of Section 2.1 and 3.7, unless otherwise specified as contemplated by Section 3.1, payment of principal of, premium, if any, and interest on any Security in permanent global form shall be made to the Person or Persons specified therein.

Section 2.4. FORM OF LEGEND FOR SECURITIES IN GLOBAL FORM . Unless otherwise provided with respect to any Securities of any series pursuant to Section 3.1 or required by the Depository, any Security of such series in global form authenticated and delivered hereunder shall bear a legend in substantially the following form:

> This Security is in global form within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. Unless and until it is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. Every Security authenticated and delivered upon registration of, or in exchange for, or in lieu of, this Security will be in global form, subject to the foregoing.

ARTICLE III

THE SECURITIES

Section 3.1. AMOUNT UNLIMITED; ISSUABLE IN SERIES . (a) The aggregate principal amount of Securities which may be authenticated, delivered and outstanding under this Indenture is unlimited. The Securities may be issued from time to time in one or more series.

(b) The following matters shall be established, without the approval of any Holders, with respect to each series of Securities issued hereunder in one or more indentures supplemental hereto:

(1) the title of the Securities of the series (which title shall distinguish the Securities of the series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated, delivered and outstanding under this Indenture (which limit shall not pertain to Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.5, 3.6, 8.6, or

10.7 and except for any Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder);

(3) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable or the method of determination and/or extension of such date or dates; and the amount or amounts of such principal and premium, if any, payments or the method of determination thereof;

(4) the rate or rates (which may be fixed or variable) at which the Securities of the series shall bear interest, if any, or the method of calculating and/or resetting such rate or rates of interest, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which any such interest shall be payable or the method by which such dates will be determined, the terms of any deferral of interest and the additional interest, if any, thereon and, with respect to Registered Securities, the Regular Record Date, if any, for the interest payable on any Registered Security on any Interest Payment Date, the right, if any, of the Company to extend the Interest Payment Dates and the Regular Record Date, if any, and the duration of the extensions and the basis upon which interest shall be calculated if other than upon a 360-day year of twelve 30-day months;

(5) the place or places where the principal of, premium, if any, and interest, if any, on Securities of the series shall be payable;

(6) the period or periods within which, the price or prices at which, the currency or currencies (including currency units) in which, and the other terms and conditions upon which, Securities of the series may be redeemed, in whole or in part, at the option of the Company or otherwise, and, if other than as provided in Section 10.3, the manner in which the particular Securities of such series (if less than all Securities of such series are to be redeemed) are to be selected for redemption;

(7) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or upon the happening of a specified event or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the other terms and conditions upon which, Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation and provisions for the remarketing of such series;

(8) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(9) if other than Dollars, the currency or currencies (including currency unit or units) in which the principal of, premium, if any, and interest, if any, or other payments, if any, on the Securities of the series shall be payable, or in which the Securities of the series shall be denominated, and the particular provisions applicable thereto in accordance with, in addition to, or in lieu of the provisions of Section 3.11;

(10) the terms, if any, upon which Securities of the series may be convertible into or exchanged for other Securities, Common Stock, Preferred Stock, other debt securities, warrants to purchase any of the foregoing, or other securities of any kind of the Company or any other

obligor and the terms and conditions upon which the conversion or exchange shall be effected, including the initial conversion or exchange price or rate, the conversion or exchange period, and any other additional provisions;

(11) if the payments of principal of, premium, if any, or interest, if any, or other payments, if any, on the Securities of the series are to be made, at the election of the Company or a Holder, in a currency or currencies (including currency unit or units) other than that in which such Securities are denominated or designated to be payable, the currency or currencies (including currency unit or units) in which such payments are to be made, the terms and conditions of such payments and the manner in which the exchange rate with respect to such payments shall be determined, and the particular provisions applicable thereto in accordance with, in addition to, or in lieu of the provisions of Section 3.11;

(12) if the amount of payments of principal of, premium, if any, and interest, if any, or other payments, if any, on the Securities of the series shall be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on the price of one or more commodities, derivatives or securities; one or more securities, derivatives or commodities exchange indices or other indices; a currency or currencies (including currency unit or units) other than that in which the Securities of the series are denominated or designated to be payable; or any other variable or the relationship between any variables or combination of variables), the index, formula or other method by which such amounts shall be determined;

(13) if other than the principal amount thereof, the portion of the principal amount of such Securities of the series or other amount which shall be payable upon declaration of acceleration thereof pursuant to Section 5.2 or provable in bankruptcy or the method by which such portion or amount shall be determined;

(14) if other than as provided in Section 3.7, the Person to whom any interest on any Registered Security of the series shall be payable;

(15) if the principal amount payable at the Maturity of any Securities of the series will not be determinable as of one or more dates prior to Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date hereunder or thereunder, or, if other than as provided in the definition of the term “Outstanding”, which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined) and, if necessary, the manner of determining the equivalent thereof in U.S. currency;

(16) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;

(17) the applicability of or any deletions from, modifications of or additions to the Events of Default set forth in Section 5.1 or covenants of the Company set forth in Article IX pertaining to the Securities of the series;

(18) under what circumstances, if any, the Company will pay additional amounts on the Securities of that series held by a Person who is not a U.S. Person in respect of taxes or

similar charges withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts (and the terms of any such option);

(19) the date as of which any temporary global Security representing Outstanding Securities of the series shall be dated if other than the date of original issuance of the first Security of the series to be issued;

(20) the forms of the Securities of the series;

(21) any changes or additions to the provisions provided in Article IV of this Indenture pertaining to defeasance, including without limitation, the exclusion of Section 4.4 or 4.5, or both, with respect to the Securities of or within the series; or the applicability, if any, to the Securities of or within the series of such means of defeasance or covenant defeasance other than those provided in Sections 4.4 and 4.5 as may be specified for the Securities of such series, and whether, for the purpose of any defeasance or covenant defeasance pursuant to Section 4.4 or 4.5 or otherwise, the term "Government Obligations" shall include obligations referred to in the definition of such term which are not obligations of the United States or an agency or instrumentality of the United States;

(22) if other than the Trustee, the identity of the Registrar and any Paying Agent;

(23) any terms which may be related to warrants, options or other rights to purchase and sell securities issued by the Company in connection with, or for the purchase of, Securities of such series, including whether and under what circumstances the Securities of any series may be used toward the exercise price of any such warrants, options or other rights;

(24) the designation of the initial Exchange Rate Agent, if any;

(25) whether any of the Securities of the series shall be issued in whole or in part in global form, and if so (i) the Depository for such global Securities, (ii) the form of any legend in addition to or in lieu of that in Section 2.4 which shall be borne by such global Securities, (iii) whether beneficial owners of interests in any Securities of the series in global form may exchange such interests for certificated Securities of such series and of like tenor of any authorized form and denomination, and (iv) if other than as provided in Section 3.5, the circumstances under which any such exchange may occur;

(26) the priority, ranking or subordination, if any, of the Securities of the series;

(27) if the Securities of the series will be governed by, and the extent to which such Securities will be governed by, any law other than the laws of the state of New York;

(28) the terms, if any, of any guarantee of the payment of principal, premium and interest with respect to Securities of the series and any corresponding changes to the provisions of this Indenture as then in effect;

(29) the terms, if any, of the transfer, mortgage, pledge or assignment as security for the Securities of the series of any properties, assets, moneys, proceeds, securities or other

collateral, including whether certain provisions in the Trust Indenture Act are applicable and any corresponding changes to provisions of this Indenture as then in effect; and

(30) any other terms of the series, including any terms which may be required by or advisable under United States laws or regulations or advisable (as determined by the Company) in connection with the marketing of Securities of the series.

(c) The terms applicable to the Securities of any one series need not be identical but may vary as may be provided in an indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

(d) Except as may be otherwise expressly provided in the applicable supplemental indenture, as contemplated by this Section 3.1, the Securities of any series shall rank PARI PASSU with the Securities of each other Series.

Section 3.2. DENOMINATIONS . Unless otherwise provided as contemplated by Section 3.1, any Securities of a series shall be issuable in denominations of $1,000 and any integral multiple thereof.

Section 3.3. EXECUTION, AUTHENTICATION, DELIVERY AND DATING . Securities shall be executed on behalf of the Company by the Chief Executive Officer, the Chief Financial Officer, the President, or any Vice President, the Treasurer or the Corporate Secretary of the Company. The seal of the Company, if any, may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities. The signatures of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities.

In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to section 315(a) through (d) of the Trust Indenture Act) shall be fully protected in relying upon, an Opinion of Counsel substantially to the effect that,

(1) the form of such Securities have been established in conformity with the provisions of this Indenture;

(2) the terms of such Securities have been, or in the case of Securities of a series offered in a Periodic Offering will be, established in conformity with the provisions of this

Indenture, subject in the case of Securities offered in a Periodic Offering, to any conditions specified in such Opinion of Counsel; and

(3) such Securities, when authenticated and delivered by the Trustee, issued by the Company in accordance with the provisions of this Indenture, and delivered to and duly paid for by the purchasers thereof, and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles and except further as enforcement thereof may be limited by or subject to certain exceptions and qualifications specified in such Opinion of Counsel, including in the case of any Securities denominated in a Foreign Currency, (A) requirements that a claim with respect to any Securities denominated other than in Dollars (or a foreign currency or foreign currency unit judgment in respect of such claim) be converted into Dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or (B) governmental authority to limit, delay or prohibit the making of payments in foreign currency or currency units or payments outside the United States.

Such Opinion of Counsel need express no opinion as to the enforceability of Section 6.8 or as to whether a court in the United States would render a money judgment in a currency other than that of the United States. Such counsel may rely on opinions of other counsel (copies of which shall be delivered to the Trustee), and, to the extent such opinion involves factual matters, such counsel may rely upon certificates of officers of the Company and certificates of public officials.

The Trustee shall have the right to decline to execute any supplemental indenture establishing the terms of or the form of such Securities if, in the written opinion of counsel to the Trustee (which counsel may be an employee of the Trustee), such action may not lawfully be taken, or if the Trustee, in good faith by a Responsible Officer of the Trustee, shall determine, in its sole discretion, that such action would adversely affect it.

Notwithstanding the provisions of Section 3.1 and of the two preceding paragraphs, if all of the Securities of any series are not to be issued at one time, it shall not be necessary to deliver the Officer's Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to the two preceding paragraphs in connection with the authentication of each Security of such series if such documents, with appropriate modifications to cover such future issuances, are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and the other documents delivered pursuant to Sections 2.1 and 3.1 and this Section, as applicable, in connection with the first authentication of Securities of such series.

If the Company shall establish pursuant to Section 3.1 that the Securities of a series are to be issued in whole or in part in global form, then, unless otherwise provided with respect to such

Securities pursuant to Section 3.1, the Company shall execute and the Trustee shall, in accordance with this Section and the Company Order with respect to such series, authenticate and deliver one or more Securities in global form that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such Security or Securities in global form, (ii) shall be registered, if a Registered Security, in the name of the Depository for such Security or Securities in global form or the nominee of such Depository, (iii) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instruction and (iv) shall bear the legend set forth in Section 2.4.

Unless otherwise established pursuant to Section 3.1, each Depository designated pursuant to Section 3.1 for a Registered Security in global form must, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and any other applicable statute or regulation. Neither the Company nor the Trustee shall have any responsibility to determine if the Depository is so registered.

Each Depository shall enter into an agreement with the Company and the Trustee, as agent, governing the respective duties and rights of such Depository, the Company and the Trustee, as agent, with regard to Securities of a series issued in global form.

Each Registered Security shall be dated the date of its authentication as contemplated by Section 3.1.

No Security shall be entitled to any benefits under this Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of one of the authorized signatories of the Trustee or an Authenticating Agent. Such signature upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered under this Indenture and is entitled to the benefits of this Indenture.

Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.9 together with a written statement (which need not comply with Section 1.2 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall not be entitled to the benefits of this Indenture.

Section 3.4. TEMPORARY SECURITIES . Pending the preparation of definitive Securities of any series, the Company may execute and, upon Company Order, the Trustee shall authenticate and deliver temporary Securities of such series which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor and form, of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. In the case of Securities of any series, all or a portion of such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, each of which shall be exchanged in accordance with the provisions thereof, if temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company pursuant to Section 9.2 in a Place of Payment for such series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations and of like tenor. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series except as otherwise specified as contemplated by Section 3.1.

Section 3.5. REGISTRATION, TRANSFER AND EXCHANGE . The Company shall cause to be kept at the Corporate Trust Office of the Trustee or in any office or agency to be maintained by the Company in accordance with Section 9.2 in a Place of Payment or in such other place or medium as may be specified pursuant to Section 3.1 a register for each series of Securities (the registers maintained in such office or in any such office or agency of the Company in a Place of Payment being herein sometimes referred to collectively as the "Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and the registration of transfers of Registered Securities. The Register shall be in written form or any other form capable of being converted into written form within a reasonable time. Unless otherwise provided as contemplated by Section 3.1, the Trustee is hereby appointed "Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities, and for the purpose of maintaining the Register in respect thereof, as herein provided.

Upon surrender for registration of transfer of any Registered Security of any series at the office or agency maintained pursuant to Section 9.2 in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of a like aggregate principal amount.

Unless otherwise provided as contemplated by Section 3.1, at the option of the Holder, Registered Securities of any series (except a Registered Security in global form) may be exchanged for other Registered Securities of the same series, of any authorized denominations and of a like aggregate principal amount containing identical terms and provisions, upon surrender of the Registered Securities to be exchanged at such office or agency. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

Unless otherwise specified pursuant to Section 3.1 with respect to a series of Securities or as otherwise provided below in this Section 3.5, owners of beneficial interests in Securities of such series represented by a Security issued in global form will not be entitled to have Securities of such series registered in their names, will not receive or be entitled to receive physical

delivery of Securities of such series in certificated form and will not be considered the Holders or owners thereof for any purposes hereunder. Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for Securities in certificated form in the circumstances described below, a Security in global form representing all or a portion of the Securities of a series may not be transferred or exchanged except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

If at any time the Depository for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depository for the Securities of such series or if at any time the Depository for the Securities of such series notifies the Company that it shall no longer be eligible under Section 3.3, the Company shall appoint a successor Depository with respect to the Securities of such series. Unless otherwise provided as contemplated by Section 3.1, if a successor Depository for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 3.1(b) (25) shall no longer be effective with respect to the Securities of such series and the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of certificated Securities of such series of like tenor, shall authenticate and deliver, Securities of such series of like tenor in certificated form, in authorized denominations and in an aggregate principal amount equal to the principal amount of the Security or Securities of such series of like tenor in global form in exchange for such Security or Securities in global form.

The Company may at any time in its sole discretion determine that Securities of a series issued in global form shall no longer be represented by such a Security or Securities in global form. In such event the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of certificated Securities of such series of like tenor, shall authenticate and deliver, Securities of such series of like tenor in certificated form, in authorized denominations and in an aggregate principal amount equal to the principal amount of the Security or Securities of such series of like tenor in global form in exchange for such Security or Securities in global form.

If specified by the Company pursuant to Section 3.1 with respect to a series of Securities, the Depository for such series may surrender a Security in global form of such series in exchange in whole or in part for Securities of such series in certificated form on such terms as are acceptable to the Company and such Depository. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(i) to each Person specified by such Depository a new certificated Security or Securities of the same series of like tenor, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Security in global form; and

(ii) to such Depository a new Security in global form of like tenor in a denomination equal to the difference, if any, between the principal amount of the surrendered Security in

global form and the aggregate principal amount of certificated Securities delivered to Holders thereof.

(iii) Upon the exchange of a Security in global form for Securities in certificated form, such Security in global form shall be cancelled by the Trustee. Securities in certificated form issued in exchange for a Security in global form pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Security in global form, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

Whenever any Securities are surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

Every Registered Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Registrar or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Registrar and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing.

Unless otherwise provided as contemplated by Section 3.1, no service charge shall be made for any registration of transfer or for any exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration or transfer or exchange of Securities, other than exchanges pursuant to Section 3.4 or 10.7 not involving any transfer.

Unless otherwise provided as contemplated by Section 3.1, none of the Company, the Registrar or the Trustee shall be required (i) to issue, register the transfer of, or exchange any Securities for a period beginning at the opening of 15 Business Days before any selection for redemption of Securities of like tenor and of the series of which such Security is a part and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Securities of like tenor and of such series to be redeemed; or (ii) to register the transfer of or exchange any Registered Security so selected for redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Section 3.6. REPLACEMENT SECURITIES . If a mutilated Security is surrendered to the Trustee, together with, in proper cases, such security or indemnity as may be required by the Company or the Trustee to save each of them harmless, the Company shall execute and the Trustee shall authenticate and deliver a replacement Registered Security, if such surrendered Security was a Registered Security of the same series and date of maturity.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security 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, then, in the absence of notice to the Company or the Trustee that such Security 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 Security a replacement Registered Security, if such Holder's claim appertains to a Registered Security, of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Security under this Section, the Company may require the payment 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, its agents and counsel) connected therewith.

Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security 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 Securities of that series duly issued hereunder.

The provisions of this Section 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 Securities.

Section 3.7. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED (a) .

(a) Unless otherwise provided as contemplated by Section 3.1, interest, if any, on any Registered Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest at the office or agency maintained for such purpose pursuant to 9.2; provided, however, that at the option of the Company, interest on any series of Registered Securities that bear interest may be paid (i) by check mailed to the address of the Person entitled thereto as it shall appear on the Register of Holders of Securities of such series or (ii) by wire transfer to an account maintained by the Person entitled thereto as specified in the Register of Holders of Securities of such series.

(b) Unless otherwise provided as contemplated by Section 3.1, any interest on any Registered Security of any series which is payable, but is not punctually paid or duly provided for, on any interest payment date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder,

and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names such Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause (1) provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of such Registered Securities of such series at his address as it appears in the Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names such Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest to the Persons in whose names such Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a specified date in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Registered Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause (2), such manner of payment shall be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section and Section 3.5, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.8. PERSONS DEEMED OWNERS . Prior to due presentment of any Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Registered Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 3.7) interest and any other payments on such Registered Security and for all other purposes whatsoever, whether or not such Registered Security shall be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in global form, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, with respect to any Security in global form, nothing herein shall prevent the Company or the Trustee, or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by any Depository (or its nominee), as a Holder, with respect to such Security in global form or impair, as between such Depository and owners of beneficial interests in such Security in global form, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as Holder of such Security in global form.

Section 3.9. CANCELLATION . The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and any Paying Agent shall forward to the Trustee any Securities surrendered to them for replacement, for registration of transfer, or for exchange or payment. The Trustee shall cancel all Securities surrendered for replacement, for registration of transfer, or for exchange, payment, redemption or cancellation and may destroy cancelled Securities and, if so destroyed, shall issue a certificate of destruction to the Company. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation.

Section 3.10. COMPUTATION OF INTEREST . Except as otherwise specified as contemplated by Section 3.1, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11. CURRENCY AND MANNER OF PAYMENT IN RESPECT OF SECURITIES . (a) Unless otherwise specified with respect to any Securities pursuant to Section 3.1, with respect to Registered Securities of any series payment of the principal of, premium, if any, interest, if any, and other amounts, if any, on any Registered Security of such series will be made in the currency or currencies or currency unit or units in which such Registered Security is payable. The provisions of this Section 3.11, including without limitation any defined terms specified herein, may be modified or superseded in whole or in part pursuant to Section 3.1 with respect to any Securities.

(b) If expressly specified pursuant to Section 3.1, with respect to Registered Securities of any series, Holders shall have the option, subject to paragraphs (d) and (e) below, to receive payments of principal of, premium, if any, or interest, if any, on such Registered Securities in any of the currencies or currency units which may be designated for such election by delivering to the Trustee (or the applicable Paying Agent) a written election with signature guarantees and in the applicable form established pursuant to Section 3.1, not later than the close of business on the Election Date immediately preceding the applicable payment date. If a Holder so elects to receive such payments in any such currency or currency unit, such election will remain in effect for such Holder or any transferee of such Holder until changed by such Holder or such transferee by written notice to the Trustee (or any applicable Paying Agent) for such series of Registered Securities (but any such change must be made not later than the close of business on the Election Date immediately preceding the next payment date to be effective for the payment to be made on such payment date, and no such change of election may be made with

respect to payments to be made on any Registered Security of such series with respect to which an Event of Default has occurred or with respect to which the Company has deposited funds pursuant to Article IV or with respect to which a notice of redemption has been given by or on behalf of the Company). Any Holder of any such Registered Security who shall not have delivered any such election to the Trustee (or any applicable Paying Agent) not later than the close of business on the applicable Election Date will be paid the amount due on the applicable payment date in the relevant currency or currency unit as provided in Section 3.11(a). The Trustee (or the applicable Paying Agent) shall notify the Company and the Exchange Rate Agent as soon as practicable after the Election Date of the aggregate principal amount of Registered Securities for which Holders have made such written election.

(c) If the election referred to in paragraph (b) above has been provided for with respect to any Registered Securities of a series pursuant to Section 3.1, then, unless otherwise specified pursuant to Section 3.1 with respect to any such Registered Securities, not later than the fourth Business Day after the Election Date for each payment date for such Registered Securities, the Exchange Rate Agent will deliver to the Company a written notice specifying, in the currency or currencies or currency unit or units in which Registered Securities of such series are payable, the respective aggregate amounts of principal of, premium, if any, and interest, if any, on such Registered Securities to be paid on such payment date, and specifying the amounts in such currency or currencies or currency unit or units so payable in respect of such Registered Securities as to which the Holders of such Registered Securities denominated in any currency or currencies or currency unit or units shall have elected to be paid in another currency or currency unit as provided in paragraph (b) above. If the election referred to in paragraph (b) above has been provided for with respect to any Registered Securities of a series pursuant to Section 3.1, and if at least one Holder has made such election, then, unless otherwise specified pursuant to Section 3.1, on the second Business Day preceding such payment date the Company will deliver to the Trustee (or the applicable Paying Agent) an Exchange Rate Officer's Certificate in respect of the Dollar, Foreign Currency or Currencies or other currency unit payments to be made on such payment date. Unless otherwise specified pursuant to Section 3.1, the Dollar, Foreign Currency or Currencies or other currency unit amount receivable by Holders of Registered Securities who have elected payment in a currency or currency unit as provided in paragraph (b) above shall be determined by the Company on the basis of the applicable Market Exchange Rate in effect on the second Business Day (the "Valuation Date") immediately preceding each payment date, and such determination shall be conclusive and binding for all purposes, absent manifest error.

(d) If a Conversion Event occurs with respect to a Foreign Currency or any other currency unit in which Securities of any series are denominated or payable otherwise than pursuant to an election provided for pursuant to paragraph (b) above, then, unless otherwise specified pursuant to Section 3.1, with respect to each date for the payment of principal of, premium, if any, and interest, if any, on the applicable Securities denominated or payable in such Foreign Currency or such other currency unit occurring after the last date on which such Foreign Currency or such other currency unit was used (the "Conversion Date"), the Dollar shall be the currency of payment for use on each such payment date (but such Foreign Currency or such other currency unit that was previously the currency of payment shall, at the Company's election, resume being the currency of payment on the first such payment date preceded by 15 Business Days during which the circumstances which gave rise to the Dollar becoming such currency of

payment no longer prevail). Unless otherwise specified pursuant to Section 3.1, the Dollar amount to be paid by the Company to the Trustee or any applicable Paying Agent and by the Trustee or any applicable Paying Agent to the Holders of such Securities with respect to such payment date shall be, in the case of a Foreign Currency other than a currency unit, the Dollar Equivalent of the Foreign Currency or, in the case of a Foreign Currency that is a currency unit, the Dollar Equivalent of the Currency Unit, in each case as determined by the Exchange Rate Agent in the manner provided in paragraph (f) or (g) below.

(e) Unless otherwise specified pursuant to Section 3.1, if the Holder of a Registered Security of a series denominated in any currency or currency unit shall have elected to be paid in another currency or currency unit or in other currencies as provided in paragraph (b) above, and (i) a Conversion Event occurs with respect to any such elected currency or currency unit, such Holder shall receive payment in the currency or currency unit in which payment would have been made in the absence of such election and (ii) if a Conversion Event occurs with respect to the currency or currency unit in which payment would have been made in the absence of such election, such Holder shall receive payment in Dollars as provided in paragraph (d) of this Section 3.11 (but, subject to any contravening valid election pursuant to paragraph (b) above, the elected payment currency or currency unit, in the case of the circumstances described in clause (i) above, or the payment currency or currency unit in the absence of such election, in the case of the circumstances described in clause (ii) above, shall, at the Company's election, resume being the currency or currency unit of payment with respect to Holders who have so elected, but only with respect to payments on payment dates preceded by 15 Business Days during which the circumstances which gave rise to such currency or currency unit, in the case of the circumstances described in clause (i) above, or the Dollar, in the case of the circumstances described in clause (ii) above, becoming the currency or currency unit, as applicable, of payment, no longer prevail).

(f) The "Dollar Equivalent of the Foreign Currency" shall be determined by the Exchange Rate Agent and shall be obtained for each subsequent payment date by the Exchange Rate Agent by converting the specified Foreign Currency into Dollars at the Market Exchange Rate on the Conversion Date.

(g) The "Dollar Equivalent of the Currency Unit" shall be determined by the Exchange Rate Agent and, subject to the provisions of paragraph (h) below, shall be the sum of each amount obtained by converting the Specified Amount of each Component Currency (as each such term is defined in paragraph (h) below) into Dollars at the Market Exchange Rate for such Component Currency on the Valuation Date with respect to each payment.

(h) For purposes of this Section 3.11, the following terms shall have the following meanings:

A "Component Currency" shall mean any currency which, on the Conversion Date, was a component currency of the relevant currency unit.

"Conversion Event" shall mean the cessation of use of (i) a Foreign Currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, or (ii) any currency unit for the purposes for which it was established.

"Election Date" shall mean the Regular Record Date for the applicable series of Registered Securities as specified pursuant to Section 3.1 by which the written election referred to in Section 3.11(b) may be made.

"Exchange Rate Agent", when used with respect to Securities of or within any series, shall mean, unless otherwise specified with respect to such series of Securities pursuant to Section 3.1, a New York Clearing House bank designated pursuant to Section 3.1 or Section 3.12.

"Exchange Rate Officer's Certificate" shall mean a certificate setting forth (i) the applicable Market Exchange Rate or the applicable bid quotation and (ii) the Dollar or Foreign Currency amounts of principal (and premium, if any) and interest, if any (on an aggregate basis and on the basis of a Security having the lowest denomination principal amount in the relevant currency or currency unit), payable with respect to a Security of any series on the basis of such Market Exchange Rate or the applicable bid quotation, signed by the President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer, or any Assistant Treasurer of the Company.

"Market Exchange Rate" shall mean, unless otherwise specified with respect to Securities of any series pursuant to Section 3.1, as of any date of determination, (i) for any conversion involving a currency unit on the one hand and Dollars or any Foreign Currency on the other, the exchange rate between the relevant currency unit and Dollars or such Foreign Currency calculated by the method specified pursuant to Section 3.1 for the Securities of the relevant series, (ii) for any conversion of Dollars into any Foreign Currency, the noon buying rate for such Foreign Currency for cable transfers quoted in New York City as certified for customs purposes by the Federal Reserve Bank of New York and (iii) for any conversion of one Foreign Currency into Dollars or another Foreign Currency, the spot rate at noon local time in the relevant market at which, in accordance with normal banking procedures, the Dollars or Foreign Currency into which conversion is being made could be purchased with the Foreign Currency from which conversion is being made from major banks located in New York City, London or any other principal market for Dollars or such purchased Foreign Currency, in each case determined by the Exchange Rate Agent. Unless otherwise specified with respect to Securities of any series pursuant to Section 3.1, in the event of the unavailability of any of the exchange rates provided for in the foregoing clauses (i), (ii) and (iii), the Exchange Rate Agent shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York as of the most recent available date, or quotations from one or more major banks in New York City, London or other principal market for such currency or currency unit in question (which may include any such bank acting as Trustee under this Indenture), or such other quotations as the Exchange Rate Agent shall deem appropriate. Unless otherwise specified by the Exchange Rate Agent, if there is more than one market for dealing in any currency or currency unit by reason of foreign exchange regulations or otherwise, the market to be used in respect of such currency or currency unit shall be that upon which a nonresident issuer of securities designated in such currency or currency unit would purchase such currency or currency unit in order to make payments in respect of such securities.

A "Specified Amount" of a Component Currency shall mean the number of units of such Component Currency or fractions thereof which such Component Currency represented in the

relevant currency unit on the Conversion Date. If after the Conversion Date the official unit of any Component Currency is altered by way of combination or subdivision, the Specified Amount of such Component Currency shall be divided or multiplied in the same proportion. If after the Conversion Date two or more Component Currencies are consolidated into a single currency, the respective Specified Amounts of such Component Currencies shall be replaced by an amount in such single currency equal to the sum of the respective Specified Amounts of such consolidated Component Currencies expressed in such single currency, and such amount shall thereafter be a Specified Amount and such single currency shall thereafter be a Component Currency. If after the Conversion Date any Component Currency shall be divided into two or more currencies, the Specified Amount of such Component Currency shall be replaced by specified amounts of such two or more currencies, the sum of which, at the Market Exchange Rate of such two or more currencies on the date of such replacement, shall be equal to the Specified Amount of such former Component Currency and such amounts shall thereafter be Specified Amounts and such currencies shall thereafter be Component Currencies. If, after the Conversion Date of the relevant currency unit, a Conversion Event (other than any event referred to above in this definition of "Specified Amount") occurs with respect to any Component Currency of such currency unit and is continuing on the applicable Valuation Date, the Specified Amount of such Component Currency shall, for purposes of calculating the Dollar Equivalent of the Currency Unit, be converted into Dollars at the Market Exchange Rate in effect on the Conversion Date of such Component Currency.

All decisions and determinations of the Exchange Rate Agent regarding the Dollar Equivalent of the Foreign Currency, the Dollar Equivalent of the Currency Unit, the Market Exchange Rate and changes in the Specified Amounts as specified above with respect to Securities of any series shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company, the Trustee (and any applicable Paying Agent) and all Holders of Securities of such series denominated or payable in the relevant currency, currencies or currency units. The Exchange Rate Agent shall promptly give written notice to the Company and the Trustee of any such decision or determination.

In the event that the Company determines in good faith that a Conversion Event has occurred with respect to a Foreign Currency, the Company will promptly give written notice thereof to the Trustee (or any applicable Paying Agent) and to the Exchange Rate Agent (and the Trustee (or such Paying Agent) will promptly thereafter give notice in the manner provided in Section 1.6 to the affected Holders) specifying the Conversion Date. In the event the Company so determines that a Conversion Event has occurred with respect to any currency unit in which Securities of a series are denominated or payable, the Company will promptly give written notice thereof to the Trustee (or any applicable Paying Agent) and to the Exchange Rate Agent (and the Trustee (or such Paying Agent) will promptly thereafter give notice in the manner provided in Section 1.6 to the affected Holders) specifying the Conversion Date and the Specified Amount of each Component Currency on the Conversion Date. In the event the Company determines in good faith that any subsequent change in any Component Currency as set forth in the definition of Specified Amount above has occurred, the Company will similarly give written notice to the Trustee (or any applicable Paying Agent) and to the Exchange Rate Agent.

The Trustee of the appropriate series of Securities shall be fully justified and protected in relying and acting upon information received by it from the Company and the Exchange Rate

Agent and shall not otherwise have any duty or obligation to determine the accuracy or validity of such information independent of the Company or the Exchange Rate Agent.

Section 3.12. APPOINTMENT AND RESIGNATION OF EXCHANGE RATE AGENT . (a) Unless otherwise specified pursuant to Section 3.1, if and so long as the Securities of any series (i) are denominated in a currency or currency unit other than Dollars or (ii) may be payable in a currency or currency unit other than Dollars, or so long as it is required under any other provision of this Indenture, then the Company will maintain with respect to each such series of Securities, or as so required, at least one Exchange Rate Agent. The Company will cause the Exchange Rate Agent to make the necessary foreign exchange determinations at the time and in the manner specified pursuant to Section 3.11 for the purpose of determining the applicable rate of exchange and, if applicable, for the purpose of converting the issued currency or currencies or currency unit or units into the applicable payment currency or currency unit for the payment of principal, premium, if any, and interest, if any, pursuant to Section 3.11.

(b) No resignation of the Exchange Rate Agent and no appointment of a successor Exchange Rate Agent pursuant to this Section shall become effective until the acceptance of appointment by the successor Exchange Rate Agent as evidenced by a written instrument delivered to the Company and the Trustee of the appropriate series of Securities accepting such appointment executed by the successor Exchange Rate Agent.

(c) If the Exchange Rate Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Exchange Rate Agent for any cause, with respect to the Securities of one or more series, the Company shall promptly appoint a successor Exchange Rate Agent or Exchange Rate Agents with respect to the Securities of that or those series (it being understood that any such successor Exchange Rate Agent may be appointed with respect to the Securities of one or more or all of such series and that, unless otherwise specified pursuant to Section 3.1, at any time there shall only be one Exchange Rate Agent with respect to the Securities of any particular series that are originally issued by the Company on the same date and that are initially denominated and/or payable in the same currency or currencies or currency unit or units).

Section 3.13. WIRE TRANSFERS . Notwithstanding any other provisions to the contrary in this Indenture, the Company may make any payment of monies required to be deposited with the Trustee on account of principal of, or premium, if any, or interest on, Securities of any series (whether pursuant to optional or mandatory redemption payments, interest payment or otherwise) by wire transfer and immediately available funds to an account designated by the Trustee on or before the date and time such monies are to be paid to the Holders of the Security of such series in accordance with the terms hereof.

Section 3.14. CUSIP NUMBERS AND ISINS . The Company in issuing Securities may use “CUSIP” numbers or “ISINs”, and if so, the Trustee may use the CUSIP numbers or ISINs in notices of redemption or exchange as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN printed in the notice or on the Securities, that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption or exchange shall not be affected by any defect or omission of such CUSIP numbers or ISINs. The

Company will promptly notify the Trustee of any change in CUSIP numbers or ISINs known to an Officer of the Company.

ARTICLE IV

SATISFACTION, DISCHARGE AND DEFEASANCE

Section 4.1. TERMINATION OF COMPANY'S OBLIGATIONS UNDER THE INDENTURE . (a) This Indenture shall upon Company Request cease to be of further effect with respect to Securities of or within any series (except as to any surviving rights of registration of transfer or exchange of such Securities and replacement of such Securities which may have been lost, stolen or mutilated as herein expressly provided for) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to such Securities when

(1) either

(A) all such Securities previously authenticated and delivered (other than (i) such Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) such Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 9.3) have been delivered to the Trustee for cancellation; or

(B) all Securities of such series not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for giving of notice of redemption, and the Company, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in the currency or currencies or currency unit or units in which the Securities of such series are payable, sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest, with respect thereto, to the date of such deposit (in the case of any such Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums then payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligation of the Company to the Trustee and any predecessor Trustee under Section 6.8 and the obligations of the Company to any Authenticating Agent under Section 6.13 shall survive until the Securities of the discharged series have been paid in full, and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 9.3 shall survive in accordance with the terms of such Sections.

Section 4.2. APPLICATION OF TRUST FUNDS . Subject to the provisions of the last paragraph of Section 9.3, all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any and any interest for whose payment such money has been deposited with or received by the Trustee, but such money need not be segregated from other funds except to the extent required by law.

Section 4.3. APPLICABILITY OF DEFEASANCE PROVISIONS; COMPANY'S OPTION TO EFFECT DEFEASANCE OR COVENANT DEFEASANCE . Unless pursuant to Section 3.1 provision is made to exclude with respect to the Securities of a particular series either or both of (i) defeasance of the Securities of or within such series under Section 4.4 or (ii) covenant defeasance of the Securities of or within such series under Section 4.5, then, in addition to the rights of the Company pursuant to Section 4.1 above, the provisions of such Section or Sections, as the case may be, together with the provisions of Sections 4.6 through 4.9 inclusive, with such modifications thereto as may be specified pursuant to Section 3.1 with respect to any Securities of such series, shall be applicable to such Securities and the Company may at its option, at any time, with respect to such Securities elect to have Section 4.4 (if applicable) or Section 4.5 (if applicable) be applied to such Outstanding Securities upon compliance with the conditions set forth below in this Article.

Section 4.4. DEFEASANCE AND DISCHARGE . Upon the Company's exercise of the option specified in Section 4.3 applicable to this Section with respect to the Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Securities on the date the conditions set forth in Section 4.6 are satisfied (hereinafter, a "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Securities which Securities shall thereafter be deemed to be "Outstanding" only for the purposes of Section 4.7 and the other Sections of this Indenture referred to in clause (ii) of this Section, and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall on Company Order execute proper instruments acknowledging the same), except the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Securities to receive, solely from the trust funds described in Section 4.6(a) and as more fully set forth in such Section, payments in respect of the principal of, premium, if any, and interest, if any, on such Securities when such payments are due; (ii) the Company's obligations with respect to such Securities under Sections 3.5, 3.6, 9.2 and 9.3 and with respect to the payment of additional amounts, if any, payable with respect to such Securities as specified pursuant to

Section 3.1(b) (18); (iii) the rights, powers, trusts, duties, immunities and indemnities of the Trustee hereunder and (iv) this Article IV. Subject to compliance with this Article IV, the Company may exercise its option under this Section notwithstanding the prior exercise of its option under Section 4.5 with respect to such Securities. Following a defeasance, payment of such Securities may not be accelerated because of an Event of Default.

Section 4.5. COVENANT DEFEASANCE . Upon the Company's exercise of the option specified in Section 4.3 applicable to this Section with respect to any Securities of or within a series, the Company shall be released from its obligations under Sections 7.1, 9.4 and 9.5, and, if specified pursuant to Section 3.1, its obligations under any other covenant, with respect to such Securities on and after the date the conditions set forth in Section 4.6 are satisfied (hereinafter, "covenant defeasance"), and such Securities shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with Sections 7.1, 9.4 and 9.5, or such other specified covenant, and the operation of Sections 5.1(3) and 5.1(6), but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 5.1(3) or 5.1(6) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

Section 4.6. CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE . The following shall be the conditions to application of Section 4.4 or Section 4.5 to any Securities of or within a series:

(a) The Company shall have deposited or caused to be deposited irrevocably with the Trustee (or another trustee satisfying the requirements of Section 6.11 who shall agree to comply with, and shall be entitled to the benefits of, the provisions of Sections 4.3 through 4.9 inclusive and the last paragraph of Section 9.3 applicable to the Trustee, for purposes of such Sections also a "Trustee") as trust funds in trust for the purpose of making the payments referred to in clauses (x) and (y) of this Section 4.6(a), with instructions to the Trustee as to the application thereof, (A) money in an amount (in such currency, currencies or currency unit in which such Securities are then specified as payable at Maturity), or (B) Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment referred to in clause (x) or (y) of this Section 4.6(a), money in an amount or (C) a combination thereof in an amount, sufficient, in the determination of a nationally recognized independent accounting or investment banking firm expressed in a written certification thereof delivered to the Trustee in the case of clauses (B) or (C), to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (x) the principal of, premium, if any, and interest, if any, on such Securities on the Maturity of such principal or installment of principal or interest and (y) any mandatory sinking fund payments applicable to such Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and such Securities.

Before such a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of such Securities at a future date or dates in accordance with Article X which shall be given effect in applying the foregoing.

(b) The deposit pursuant to subsection (a) above shall not result in or constitute a Default or Event of Default under this Indenture or result in a breach or violation of, or constitute a default under, any other material agreement or instrument to which the Company is a party or by which it is bound.

(c) In the case of an election under Section 4.4, no Default or Event of Default under Section 5.1(4) or 5.1(5) with respect to such Securities shall have occurred and be continuing during the period commencing on the date of such deposit and ending on the 91st day after such date (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under Section 4.4, the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts and in the same manner and at the same times, as would have been the case if such deposit, defeasance and discharge had not occurred.

(e) In the case of an election under Section 4.5, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 4.4 or the covenant defeasance under Section 4.5 (as the case may be) have been complied with and an Opinion of Counsel to the effect that either (i) as a result of a deposit pursuant to subsection (a) above and the related exercise of the Company's option under Section 4.4 or Section 4.5 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Company, with respect to the trust funds representing such deposit or by the trustee for such trust funds or (ii) all necessary registrations under said act have been effected.

(g) Such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith as contemplated by Section 3.1.

Section 4.7. DEPOSITED MONEY AND GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST . Subject to the provisions of the last paragraph of Section 9.3, all money and

Government Obligations (or other property as may be provided pursuant to Section 3.1) (including the proceeds thereof) deposited with the Trustee pursuant to Section 4.6 in respect of any Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

If specified with respect to a Security of any series pursuant to Section 3.1, if, after a deposit referred to in Section 4.6(a) has been made, (i) the Holder of such Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 3.11(b) or the terms of such Security to receive payment in a currency or currency unit other than that in which the deposit pursuant to Section 4.6(a) has been made in respect of such Security, or (ii) a Conversion Event occurs as contemplated in Section 3.11(d) or 3.11(e) or by the terms of the Security in respect of which the deposit pursuant to Section 4.6(a) has been made, the indebtedness represented by such Security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of, premium, if any, and interest, if any, on such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the currency or currency unit in which such Security becomes payable as a result of such election or Conversion Event based on the applicable Market Exchange Rate for such currency or currency unit in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such currency or currency unit in effect (as nearly as feasible) at the time of the Conversion Event.

Section 4.8. REPAYMENT TO COMPANY . The Trustee (and any Paying Agent) shall promptly pay to the Company upon Company Request any excess money or securities held by them at any time.

Section 4.9. INDEMNITY FOR GOVERNMENT OBLIGATIONS . The Company shall pay, and shall indemnify the Trustee against, any tax, fee or other charge imposed on or assessed against Government Obligations deposited pursuant to this Article or the principal and interest received on such Government Obligations, other than any such tax, fee or other charge that by law is for the account of the Holders of the Securities subject to defeasance or covenant defeasance pursuant to this Article.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.1. EVENTS OF DEFAULT . An “Event of Default” occurs with respect to the Securities of any series, except to the extent such event is specifically deleted or modified by the applicable Board Resolutions or supplemental indenture as contemplated by Section 3.1 for the Securities of such series, if (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment,

decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) the Company defaults in the payment of interest on any Security of that series or any additional amount payable with respect to any Security of that series as specified pursuant to Section 3.1(b)(17) when the same becomes due and payable and such default continues for a period of 30 days;

(2) the Company defaults in the payment of the principal of or any premium on any Security of that series when the same becomes due and payable at its Maturity or on redemption or otherwise, or in the payment of a mandatory sinking fund payment when and as due by the terms of the Securities of that series;

(3) the Company defaults in the performance of, or breaches, any covenant or warranty of the Company in this Indenture with respect to any Security of that series (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and such default or breach continues for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(4) the Company, pursuant to or within the meaning of any Bankruptcy Law, (A) commences a voluntary case, (B) consents to the entry of an order for relief against it in an involuntary case, (C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or (D) makes a general assignment for the benefit of its creditors;

(5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (A) is for relief against the Company in an involuntary case, (B) appoints a Custodian of the Company or for all or substantially all of its property, or (C) orders the liquidation of the Company; and the order or decree remains unstayed and in effect for 90 days; or

(6) any other Event of Default provided as contemplated by Section 3.1 with respect to Securities of that series.

The term "Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

Section 5.2. ACCELERATION; RESCISSION AND ANNULMENT . If an Event of Default with respect to the Securities of any series at the time Outstanding occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of all of the Outstanding Securities of that series, by written notice to the Company (and, if given by the Holders, to the Trustee), may declare the principal (or, if the Securities of that series are Original Issue Discount Securities or Indexed Securities, such portion of the principal amount or other amount as may be specified in the terms of that series) of all the Securities of that series to be due and payable and upon any such declaration such principal (or, in the case of Original Issue

Discount Securities or Indexed Securities, such specified amount) shall be immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate principal amount of the Outstanding Securities of that series, by written notice to the Trustee, may rescind and annul such declaration and its consequences if all existing Defaults and Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.7. Upon any such rescission, the parties hereto shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the parties hereto shall continue as though no acceleration had occurred.

Section 5.3. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE . The Company covenants that if:

(1) default is made in the payment of any interest on any Security of any series, when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of any series at the Maturity thereof and such default continues for a period of 10 days, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal, premium, if any, and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal, premium, if any, and on any overdue interest, at the rate or rates prescribed therefor in such Securities.

If the Company fails to pay such principal, premium, if any, and interest amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of such principal, premium, if any, and interest amounts so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company.

In addition, if an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed, in its own name and as trustee of an express trust, to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4. TRUSTEE MAY FILE PROOFS OF CLAIM . The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders of Securities of each series allowed in any judicial proceedings relating to the Company, its creditors or its property.

Section 5.5. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES . All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee, in its own name and as trustee of an express trust, without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto.

Section 5.6. DELAY OR OMISSION NOT WAIVER . No delay or omission by the Trustee or any Holder of any Securities to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of or acquiescence in any such Event of Default.

Section 5.7. WAIVER OF PAST DEFAULTS . The Holders of a majority in aggregate principal amount of Outstanding Securities of any series by notice to the Trustee may waive on behalf of the Holders of all Securities of such series a past Default or Event of Default with respect to that series and its consequences except a Default or Event of Default (i) in the payment of the principal of, premium, if any, or interest on any Security of such series or (ii) in respect of a covenant or provision hereof which pursuant to Section 8.2 cannot be amended or modified without the consent of the Holder of each Outstanding Security of such series adversely affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In case of any such waiver, the Company, the Trustee and the Holders shall be restored to their former positions and rights hereunder and under the Securities of such series, respectively.

Section 5.8. CONTROL BY MAJORITY . The Holders of a majority in aggregate principal amount of the Outstanding Securities of each series affected (with each such series voting as a class) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it with respect to Securities of that series; provided, however, that (i) the Trustee may refuse to follow any direction that conflicts with law or this Indenture, (ii) the Trustee may refuse to follow any direction that is unduly prejudicial to the rights of the Holders of Securities of such series not consenting, or that would in the good faith judgment of the Trustee have a substantial likelihood of involving the Trustee in personal liability and (iii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 5.9. LIMITATION ON SUITS BY HOLDERS . No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) the Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of at least 25% in aggregate principal amount of the Outstanding Securities of that series have made a written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense to be, or which may be, incurred by the Trustee in pursuing the remedy;

(4) the Trustee for 60 days after its receipt of such notice, request and the offer of indemnity has failed to institute any such proceedings; and

(5) during such 60 day period, the Holders of a majority in aggregate principal amount of the Outstanding Securities of that series have not given to the Trustee a direction inconsistent with such written request.

No one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 5.10. RIGHTS OF HOLDERS TO RECEIVE PAYMENT . Notwithstanding any other provision of this Indenture, but subject to Section 9.2, the right of any Holder of a Security to receive payment of principal of, premium, if any, and, subject to Sections 3.5 and 3.7, interest on the Security of such Holder, on or after the respective due dates expressed in the Security of such Holder (or, in case of redemption, on the redemption dates), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 5.11. APPLICATION OF MONEY COLLECTED . If the Trustee collects any money pursuant to this Article with respect to a particular series of Securities, it shall pay out the money in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, upon presentation of the Securities of the applicable series and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: to the Trustee for amounts due under Section 6.8 in connection with such series of Securities in respect of which money or other property is collected;

Second: Subject to the terms of any subordination entered into as contemplated by Section 3.1(b) (27) hereof, to Holders of Securities of such series in respect of which or for the benefit of which such money has been collected for amounts due and unpaid on such Securities for principal of, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, and interest, respectively; and

Third: The balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 5.11. At least 15 days before such record date, the Trustee shall mail to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

Unless otherwise specified in a supplemental indenture with respect to a series of Securities, in any case where Securities of a series are outstanding which are denominated in more than one currency, or in a composite currency and at least one other currency, and the Trustee is directed to make ratable payments under this Section to Holders of Securities of such series, the Trustee shall calculate the amount of such payments as follows: as of the day the Trustee collects an amount under this Article, the Trustee shall, (i) as to each Holder of a Security of such series to whom an amount is due and payable under this Section which is denominated in a foreign currency or a composite currency, determine that amount of Dollars that would be obtained for the amount owing such Holder, using the rate of exchange at which in accordance with normal banking procedures the Trustee could purchase in Dollars as of such day with such amount owing, (ii) calculate the sum of all Dollar amounts determined under (i) and add thereto any amounts due and payable in Dollars; and (iii) using the individual amounts determined in (i) or any individual amounts due and payable in Dollars, as the case may be, as a numerator and the sum calculated in (ii) as a denominator, calculate as to each Holder of a Security of such series to whom an amount is owed under this Section the fraction of the amount collected under this Article payable to such Holder. Any expenses incurred by the Trustee in actually converting amounts owing Holders of Securities of a series denominated in a currency or composite currency other than that in which any amount is collected under this Article shall be likewise (in accordance with this paragraph) be borne ratably by all Holders of Securities of such series to whom amounts are payable under this Section.

Unless otherwise specified in the supplemental indenture with respect to a series of Securities, to the fullest extent allowed under applicable law, if for the purpose of obtaining judgment against the Company in any court it is necessary to convert the sum due in respect of the principal of, or any premium or interest on the Securities of any series (the "Required Currency") into a currency in which judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Business Day preceding that on which final judgment is given. The Company shall not be liable for any shortfall in payments to Holders of Securities of a series under this Section caused by a change in exchange rates between the time the amount of a judgment against it is calculated as above and the time the Trustee converts the Judgment Currency into the Required Currency to make payments under this Section to Holders of such Securities, but payment of such judgment shall discharge all amounts owed by the Company on the claim or claims underlying such judgment.

Section 5.12. 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 5.13. RIGHTS AND REMEDIES CUMULATIVE . Except as otherwise provided in Section 5.9 or with respect to the replacement or payment of mutilated, destroyed,

lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or 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.

ARTICLE VI

THE TRUSTEE

Section 6.1. DUTIES AND RESPONSIBILITIES OF TRUSTEE; RELIANCE ON DOCUMENTS, OPINIONS, ETC . (a) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; provided that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it in its reasonable discretion against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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:

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

(2) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, 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

(3) in the absence of bad faith and willful misconduct 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 that 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);

(4) 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 it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(5) 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 direction of the Holders of not less than a majority of the aggregate principal amount of the Securities at the time outstanding 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;

(6) 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 clause (a) and clause (b) below;

(7) 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 Securities;

(8) 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, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(9) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(10) in the event that the Trustee is also acting as custodian, Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded to such custodian, Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal or financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request or direction of the Holders unless such Holder has offered to the Trustee security or indemnity satisfactory to it in its reasonable discretion against any loss, liability or expense.

(b) Except as otherwise provided in the foregoing clause (a) of this Section 6.1:

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

(2) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(3) the Trustee may consult with counsel of its own selection and require an Opinion of Counsel and any advice of such counsel 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;

(4) 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 expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(5) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through a co-trustee, agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(6) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(7) 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;

(8) the Trustee shall not be responsible for monitoring the performance of other persons or for the failure of others to perform their duties;

(9) the Holders will not direct the Trustee to take action contrary to this Indenture, the Securities or applicable law, and the Trustee is not obligated to follow any instruction of the Holders that is contrary to this Indenture, the Securities or applicable law;

(10) the Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any Person authorized to sign an Officers' Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded;

(11) the Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture;

(12) in no event shall the Trustee be liable for any special, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(13) the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Securities, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or actually received by a Responsible Officer at the Corporate Trust Office of the Trustee from the Company, a Paying Agent, any Holder or any agent of any Holder, referencing this Indenture;

(14) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunction of utilities, computer (hardware or soft-ware) or communication services; accidents; labor disputes; and acts of civil or military authorities and governmental action; and

(15) neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party, nor shall the Trustee be responsible for any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

Section 6.2. TRUSTEE, PAYING AGENTS, CONVERSION AGENTS OR REGISTRAR MAY HOLD SECURITIES . The Trustee, any Paying Agent, any Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company, an Affiliate or Subsidiary with the same rights it would have if it were not Trustee, Paying Agent, Registrar or such other agent.

Section 6.3. MONIES TO BE HELD IN TRUST . Subject to the provisions of Section 4.8 and the last paragraph of Section 9.3, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for investment of or interest on any money received by it hereunder except as otherwise agreed with the Company. Except for amounts deposited pursuant to Article IV, so long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time to the Company upon a Company Order. The

Trustee shall not be obligated to take possession of any Common Stock, whether upon conversion or in connection with any discharge of this Indenture pursuant hereto.

Section 6.4. NO RESPONSIBILITIES FOR RECITALS, ETC . The recitals contained herein and in the Securities (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 Securities, except that the Trustee represents and warrants that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and thereunder; that the statements made by it in a Statement of Eligibility and Qualification on Form T-1 supplied or to be supplied to the Company in connection with the registration of any Securities are and at the time of delivery will be true and accurate; and that such Statement complies and at the time of delivery will comply with the requirements of the Trust Indenture Act and the Securities Act, in each case, applicable to such Statement. The Trustee shall not be accountable for the use or application by the Company of any Securities or the proceeds of any Securities authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 6.5. NOTICE OF DEFAULTS . If a Default occurs and is continuing with respect to the Securities of any series and if it is known to a Responsible Officer of the Trustee, the Trustee shall, within 90 days after it occurs, transmit, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, notice of all uncured Defaults known to it; provided, however, that, except in the case of a Default in payment on the Securities of any series, the Trustee may withhold the notice if and so long as a Responsible Officer in good faith determines that withholding such notice is in the interests of Holders of Securities of that series; provided, further, that in the case of any default or breach of the character specified in Section 5.1(3) with respect to the Securities of such series, no such notice to Holders shall be given until at least 90 days after the occurrence thereof.

Section 6.6. REPORTS BY TRUSTEE TO HOLDERS . (a) Within 60 days after each May 15 of each year commencing with the first May 15 after the first issuance of Securities of any series pursuant to this Indenture, the Trustee shall transmit by mail to all Holders of Securities of such series as provided in Section 313(c) of the Trust Indenture Act a brief report dated as of such May 15 if required by and in compliance with Section 313(a) of the Trust Indenture Act. A copy of each report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities of any series are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities of any series are listed on any stock exchange and of any delisting thereof.

(b) The Trustee shall from time to time transmit by mail to all Holders of Securities as provided in Section 313(c) of the Trust Indenture Act, such reports as are required to be filed pursuant to Section 313(b) of the Trust Indenture Act.

Section 6.7. SECURITY HOLDER LISTS . The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders of Securities of each series. If the Trustee is not the Registrar, the Company shall

furnish to the Trustee semiannually on or before the last day of June and December in each year, and at such other times as the Trustee may request in writing, a list, in such form and as of such date as the Trustee may reasonably require, containing all the information in the possession or control of the Registrar, the Company or any of its Paying Agents other than the Trustee as to the names and addresses of Holders of Securities of each such series.

Section 6.8. COMPENSATION AND INDEMNITY . The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation as agreed in writing between the Company and the Trustee 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 in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ and including reasonable attorneys' fees in connection with enforcement of its rights to indemnity herein) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability, fee, cost, loss, tax, claim, action or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including third-party claims and claims involving the Company, and including the costs and expenses of defending themselves against any claim of liability in the premises or enforcing this indemnity. The obligations of the Company under this Section 6.8 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Securities of the applicable series are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 5.11, funds held in trust herewith for the benefit of the Holders of particular Securities. The Trustee's right to receive payment of any amounts due under this Section 6.8 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 6.8 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 6.8 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any Authenticating Agent incur expenses or render services after an Event of Default specified in Section 5.1(4) or Section 5.1(5) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 6.9. SEPARATE TRUSTEE; REPLACEMENT OF TRUSTEE . (a) The Company may, but need not, appoint a separate Trustee for any one or more series of Securities. The resignation or removal of the Trustee and the appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in Section 6.10. In the event of an appointment of a separate Trustee for any one or more series of Securities, the allocation of responsibilities between the separate Trustees shall be determined at that time.

(b) The Trustee may resign at any time with respect to the Securities of any one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may (at the Company's expense) petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Holders of a majority in aggregate principal amount of the Outstanding Securities of any series may remove the Trustee with respect to any one or more series by so notifying the Trustee and the Company in writing and may appoint a successor Trustee for such series with the Company's consent.

If an instrument of acceptance by a successor Trustee required by Section 6.10 shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(d) If at any time:

(1) the Trustee fails to comply with Section 310(b) of the Trust Indenture Act after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 6.11 hereof or Section 310(a) of the Trust Indenture Act and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months; or

(3) the Trustee becomes incapable of acting, is adjudged a bankrupt or an insolvent or a receiver or public officer takes charge of the Trustee or its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Company may remove the Trustee with respect to all Securities, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to Securities of the series held by such Holder and the appointment of a successor Trustee or Trustees.

(e) If the Trustee resigns or is removed or becomes incapable of acting or if a vacancy exists in the office of Trustee for any reason, with respect to Securities of one or more series, the Company shall promptly appoint a successor Trustee with respect to the Securities of

that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.10, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.10, then, subject to Section 315(e) of the Trust Indenture Act, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

Section 6.10. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR . (a) In case of the appointment hereunder of a successor Trustee with respect to Securities of any series, every such successor Trustee shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee, without further act, deed or conveyance, shall become vested with all the rights, powers and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein such successor Trustee shall accept such appointment and which (i) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (ii) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without

any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under the Trust Indenture Act.

(d) The Company shall give, or cause to be given, notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner provided for notices to the Holders of Securities in Section 1.6. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11. ELIGIBILITY; DISQUALIFICATION . There shall at all times be a Trustee hereunder with respect to each series of Securities (which need not be the same Trustee for all series). Each Trustee hereunder shall be eligible to act as trustee under Section 310(a)(1) of the Trust Indenture Act and shall have a combined capital and surplus of at least $100,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation 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, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 6.12. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS . Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to or acquiring all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to, or by succession to or acquisition of all or substantially all of the corporate trust business of, such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13. APPOINTMENT OF AUTHENTICATING AGENT . The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which

shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue exchange, registration of transfer or partial redemption thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Trustee, a copy of which instrument shall be promptly furnished to the Company. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and, except as may otherwise be provided pursuant to Section 3.1, shall at all times be a bank or trust company or corporation organized and doing business and in good standing under the laws of the United States of America or of any State or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $1,500,000 and subject to supervision or examination by Federal or State authorities. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to or acquiring the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent for any series of Securities may at any time resign by giving written notice of resignation to the Trustee for such series and to the Company. The Trustee for any series of Securities may at any time terminate the agency of an Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee for such series may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve in the manner set forth in Section 1.6. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time such reasonable compensation as the Company and such Authenticating Agent agree in writing from time to time including reimbursement of its reasonable expenses for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

This is one of the [Securities] [of the series designated herein and] referred to in the within-mentioned Indenture.

U.S. Bank National Association, as Trustee

By _____

as Authenticating Agent

By _____

Authorized Signatory

ARTICLE VII

CONSOLIDATION, MERGER OR SALE BY THE COMPANY

Section 7.1. CONSOLIDATION, MERGER OR SALE OF ASSETS . The Company may not merge or consolidate with or into any other Person, in a transaction in which it is not the surviving corporation, or sell, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless (i) surviving or transferee Person is organized and existing under the laws of the United States or a State thereof and such Person expressly assumes by supplemental indenture all the obligations of the Company under each series of Securities and under this Indenture, (ii) immediately thereafter, giving effect to such merger or consolidation, or such sale, conveyance, transfer or other disposition, no Default or Event of Default shall have occurred and be continuing and (iii) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating that such merger, consolidation, sale, conveyance, transfer or other disposition complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with. In the event of the assumption by a successor Person of the obligations of the Company, such successor Person shall succeed to and be substituted for the Company hereunder and under each series of Securities and all such obligations of the Company shall terminate.

ARTICLE VIII

SUPPLEMENTAL INDENTURES

Section 8.1. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS . Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into indentures supplemental hereto for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants and obligations of the Company herein and in Securities (with such changes herein and therein as may be necessary or advisable to reflect such Person's legal status, if such Person is not a corporation); or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company or to comply with any requirement of the Commission or otherwise in connection with the qualification of this Indenture under the Trust Indenture Act or otherwise; or

(3) to add any additional Events of Default with respect to all or any series of Securities; or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to facilitate or provide for the issuance of Securities in global form in addition to or in place of Securities in certificated form; or

(5) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only with respect to Securities which have not been issued as of the execution of such supplemental indenture or when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(6) to add guarantees with respect to all or any series of Securities; or

(7) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee; or

(8) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 4.1, 4.4, and 4.5; provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities in any material respect; or

(9) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or

(10) to provide for the delivery of indentures supplemental hereto or the Securities of any series in or by means of any computerized, electronic or other medium, including without limitation by computer diskette; or

(11) to evidence and provide for the acceptance of appointment hereunder by a successor or separate Trustee with respect to the Securities of one or more series and/or to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Article VI; or

(12) to correct or supplement any provision herein which may be inconsistent with any other provision herein or to cure any ambiguity or omission or to correct any mistake; or

(13) to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

Section 8.2. WITH CONSENT OF HOLDERS . Without prior notice to any Holder but with the written consent of the Holders of a majority of the aggregate principal amount of the Outstanding Securities of each series adversely affected by such supplemental indenture (with the Securities of each series voting as a class), the Company and the Trustee may enter into an indenture or indentures supplemental hereto to add any provisions to or to change or eliminate any provisions of this Indenture or of any other indenture supplemental hereto or to modify the rights of the Holders of Securities of each such series; provided, however, that without the consent of the Holder of each Outstanding Security of such series adversely affected thereby, a supplemental indenture under this Section may not:

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security of such series, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or Indexed Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or change any Place of Payment where, or the coin or currency in which any Securities of such series or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date);

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture;

(3) except to the extent provided in Section 8.1(11), make any change in Section 5.7 or this 8.2 except to increase any percentage or to provide that certain other provisions of this Indenture cannot be modified or waived except with the consent of the Holders of each Outstanding Security of such series affected thereby, provided, however, that this clause shall not be deemed to require the consent of any Holders with respect to changes in the references to the "Trustee" and concomitant changes in this Section, in accordance with the requirements of Sections 6.10(b) and 8.1(11); or

(4) modify the ranking or priority of the Securities of such series.

For the purposes of this Section 8.2, if the Securities of any series are issuable upon the exercise of warrants, any holder of an unexercised and unexpired warrant with respect to such series shall not be deemed to be a Holder of Outstanding Securities of such series in the amount issuable upon the exercise of such warrants.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It is not necessary under this Section 8.2 for the Holders to consent to the particular form of any proposed supplemental indenture, but it is sufficient if they consent to the substance thereof.

Section 8.3. COMPLIANCE WITH TRUST INDENTURE ACT . Every amendment to this Indenture or the Securities of one or more series shall be set forth in a supplemental indenture that complies with the Trust Indenture Act as then in effect.

Section 8.4. EXECUTION OF SUPPLEMENTAL INDENTURES . In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon an Officer's Certificate and Opinion of Counsel stating that all conditions precedent to the execution of such supplemental indenture have been satisfied and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and that such supplemental indenture is the legal, valid and binding obligation of the Company. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which adversely affects the Trustee. The Trustee shall enter into any such supplemental indenture presented to it by the Company in compliance with this Article VIII if such supplemental indenture does not adversely affect the Trustee, as determined in its sole discretion. In formulating its opinion on such matters the Trustee shall be entitled to rely on such evidence as it deems appropriate, which may be or include, without limitation, reliance solely on an opinion or advice of its counsel.

Section 8.5. EFFECT OF SUPPLEMENTAL INDENTURES . Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities of the applicable series theretofore or thereafter authenticated and delivered hereunder and shall be bound thereby; provided that if such supplemental indenture makes any of the changes described in clauses (1) through (4) of the first proviso to Section 8.2, such supplemental indenture shall bind each Holder of a Security of the applicable series who has consented to it and every subsequent Holder of such Security or any part thereof.

Section 8.6. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES . Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE IX

COVENANTS

Section 9.1. PAYMENT OF PRINCIPAL, PREMIUM, IF ANY, AND INTEREST . The Company covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of, premium, if any, and interest on the Securities of that series in accordance with the terms of the Securities of such series, and this Indenture. An installment of principal, premium, if any, or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay the installment.

Section 9.2. MAINTENANCE OF OFFICE OR AGENCY . If Securities of a series are issued as Registered Securities, the Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series 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 any 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 of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands (provided, however, that the foregoing appointment shall not impose or imply any obligation on the part of the Trustee to maintain any office for any such purposes other than the Corporate Trust Office.)

Subject to the preceding paragraphs, the Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series 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.

Unless otherwise specified as contemplated by Section 3.1, the Trustee shall initially serve as Paying Agent. The Paying Agent may make reasonable rules not inconsistent herewith for the performance of its functions.

Section 9.3. MONEY FOR SECURITIES TO BE HELD IN TRUST; UNCLAIMED MONEY . If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of, premium, if any, or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, premium, if any, or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee in writing of any failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure so to act.

If the Company is not acting as its own Paying Agent, the Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of, premium, if any, or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any Default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal, premium, if any, or interest on the Securities of that series; and

(3) at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

Notwithstanding anything in this Section 9.3 to the contrary, the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture, or with respect to one or more series of Securities, or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Subject to applicable abandoned property laws, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of any principal, premium or interest or other amounts on any Security of any series and remaining unclaimed for two years after such principal, premium, if any, or interest or other amounts has become due and payable shall be paid to the Company (including interest income on such funds, if any), or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security, 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.

Section 9.4. CORPORATE EXISTENCE . Subject to Article VII, the Company will at all times do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 9.5. REPORTS BY THE COMPANY . The Company covenants, at any time at which there are Outstanding Securities of any series issued under this Indenture:

(a) to file with the Trustee, within 30 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, as amended; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to section 13 of the Securities Exchange Act of 1934, as amended, in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture, as may be required from time to time by such rules and regulations; and

(c) to transmit to all Holders of Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 9.5, as may be required by rules and regulations prescribed from time to time by the Commission.

Section 9.6. ANNUAL REVIEW CERTIFICATE . At any time at which there are Outstanding Securities of any series issued under this Indenture, the Company covenants and agrees to deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, a brief certificate from the principal executive officer, principal financial officer, or principal accounting officer as to his or her knowledge of whether the Company is in Default under this Indenture. For purposes of this Section 9.6, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

ARTICLE X

REDEMPTION

Section 10.1. APPLICABILITY OF ARTICLE . Securities of or within any series which are redeemable in whole or in part before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified in the applicable Board Resolution or supplemental indenture with respect to such series of Securities, as contemplated by Section 3.1 for Securities of any series) in accordance with this Article.

Section 10.2. ELECTION TO REDEEM; NOTICE TO TRUSTEE . The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In the case of any redemption at the election of the Company of less than all the Securities of any series of the same tenor, the Company shall, at least 60 days (45 days in the case of redemption of all Securities of

any series or of any series with the same (i) Stated Maturity, (ii) period or periods within which, price or prices at which and terms and conditions upon which such Securities may or shall be redeemed or purchased, in whole or in part, at the option of the Company or pursuant to any sinking fund or analogous provision or repayable at the option of the Holder and (iii) rate or rates at which such Securities bear interest, if any, or formula pursuant to which such rate or rates accrue (collectively, the "Equivalent Principal Terms")) prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of such Securities to be redeemed. In the case of any redemption of Securities of a series (i) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture or (ii) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with such restriction or condition.

Section 10.3. SELECTION OF SECURITIES TO BE REDEEMED . If less than all the Securities with Equivalent Principal Terms of any series are to be redeemed (unless all of the Securities of such series and of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series with Equivalent Principal Terms or any integral multiple thereof) of the principal amount of Securities of such series with Equivalent Principal Terms of a denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. If the Securities of a series having different issue dates, interest rates and maturities (whether or not originally issued in a Periodic Offering) are to be redeemed, the Company in its discretion may select the particular Securities or portions thereof to be redeemed and shall notify the Trustee thereof by such time prior to the relevant redemption date or dates as the Company and the Trustee may agree.

For purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 10.4. NOTICE OF REDEMPTION . Unless otherwise specified as contemplated by Section 3.1, notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the Redemption Date, unless a shorter

period is specified in the Securities to be redeemed, to each Holder of the Securities to be redeemed.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price and the amount of accrued interest, if any, to be paid;

(3) if less than all the Outstanding Securities of a series are to be redeemed, the identification (and, in the case of partial redemption of any Securities, the principal amounts) of the particular Security or Securities to be redeemed;

(4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without a charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed;

(5) the Place or Places of Payment where such Securities are to be surrendered for payment for the Redemption Price;

(6) that Securities of the series called for redemption appertaining thereto must be surrendered to the Paying Agent to collect the Redemption Price;

(7) that, on the Redemption Date, the Redemption Price will become due and payable upon each such Security, or the portion thereof, to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date;

(8) that the redemption is for a sinking fund, if such is the case;

(9) the CUSIP number and/or ISIN, if any, of such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company 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 prepare and provide to the Trustee the form of such notice, or, if acceptable to the Trustee, provides sufficient information to enable the Trustee to prepare such notice, in each case on a timely basis.)

Section 10.5. DEPOSIT OF REDEMPTION PRICE . On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 9.3) an amount of money in the currency or currencies (including currency units or composite currencies) in which the Securities of such series are payable (except as otherwise specified pursuant to Section 3.1 for the Securities of such series) sufficient to pay on the Redemption Date the Redemption Price of, and (unless the Redemption Date shall be an Interest Payment Date) interest accrued to the Redemption Date on, all Securities or portions thereof which are to be redeemed on that date.

Unless any Security by its terms prohibits any sinking fund payment obligation from being satisfied by delivering and crediting Securities (including Securities redeemed otherwise than through a sinking fund), the Company may deliver such Securities to the Trustee for crediting against such payment obligation in accordance with the terms of such Securities and this Indenture.

Section 10.6. SECURITIES PAYABLE ON REDEMPTION DATE . Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest and such Securities shall cease from and after the Redemption Date to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the Redemption Price thereof and unpaid interest to the Redemption Date. Except as provided in the next succeeding paragraph, upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in such Security.

Section 10.7. SECURITIES REDEEMED IN PART . Upon surrender of a Security that is redeemed only in part at any Place of Payment therefor (with, if the Company or the Trustee so require, 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 his attorney duly authorized in writing), the Company shall execute and the Trustee shall authenticate and deliver to the Holder of that Security, without service charge, a new Security or Securities of the same series, having the same form, terms and Stated Maturity, in any authorized denomination equal in aggregate principal amount to the unredeemed portion of the principal amount of the Security surrendered.

ARTICLE XI

SINKING FUNDS

Section 11.1. APPLICABILITY OF ARTICLE . The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series

is herein referred to as an "optional sinking fund payment." If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 11.2. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 11.2. SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES . The Company (i) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (ii) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 11.3. REDEMPTION OF SECURITIES FOR SINKING FUND . Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 11.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 10.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 10.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 10.6 and 10.7.

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 instrument.

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

EXACT SCIENCES CORPORATION

By: /s/ Jeffrey T. Elliott
Name: Jeffrey T. Elliott
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Allison Lancaster-Poole
Name: Allison Lancaster-Poole
Title: Vice President

Exhibit 4.2

EXACT SCIENCES CORPORATION

1.0% Convertible Senior Notes due 2025

FIRST SUPPLEMENTAL INDENTURE

Dated as of January 17, 2018

to

INDENTURE

Dated as of January 17, 2018

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

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FIRST SUPPLEMENTAL INDENTURE dated as of January 17, 2018 between EXACT SCIENCES CORPORATION, a Delaware corporation, as issuer (the " **Company** "), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, as trustee (the " **Trustee** ").

WHEREAS, the Company has executed and delivered to the Trustee an Indenture dated as of January 17, 2018 (the " **Base Indenture** " and, as supplemented by this First Supplemental Indenture (the " **First Supplemental Indenture** "), the " **Indenture** ") providing for the issuance from time to time of one or more series of the Company's debt securities;

WHEREAS, Section 3.1 of the Base Indenture provides that the Company and the Trustee may enter into an indenture supplemental to the Base Indenture to establish the form or terms of Securities of any series;

WHEREAS, the Company has duly authorized the creation of an issue of its 1.0% Convertible Senior Notes due 2025 (the " **Notes** "), having the terms, tenor, amount and other provisions hereinafter set forth, and, to provide therefor, the Company has duly authorized the execution and delivery of this First Supplemental Indenture; and

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

NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all holders of the Notes, as follows:

ARTICLE 1

Scope of First Supplemental Indenture; Definitions

SECTION 1.01. Scope of First Supplemental Indenture . This First Supplemental Indenture supplements the provisions of the Base Indenture, to which provisions reference is hereby made. The changes, modifications and supplements to the Base Indenture effected by this First Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time, and shall not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. Unless the context otherwise requires, section references are to this First Supplemental Indenture rather than the Base Indenture. For all purposes under the Base Indenture, the Notes shall constitute a single series of Securities. The provisions of this First

Supplemental Indenture shall supersede any conflicting provisions in the Base Indenture with respect to the Notes.

SECTION 1.02. Definitions . Each term used herein which is defined in the Base Indenture has the meaning assigned to such term in the Base Indenture unless otherwise specifically defined herein, in which case the definition set forth herein shall govern for purposes of the Notes. The words " **herein** ", " **hereof** ", " **hereunder** " and words of similar import refer to the 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 include the plural as well as the singular.

" **1% Exception** " has the meaning specified in Section 10.04(i).

" **Additional Interest** " means all amounts, if any, payable pursuant to Section 6.12.

" **Additional Notes** " has the meaning specified in Section 2.01.

" **Additional Shares** " has the meaning specified in Section 10.03.

" **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 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. Notwithstanding anything to the contrary herein, the determination of whether one Person is an " **Affiliate** " of another Person for purposes of the Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

" **Agent Members** " has the meaning specified in Section 2.04(f).

" **announcement date** " shall mean, with respect to a distribution by the Company to all or substantially all of its holders of Common Stock, the date of announcement for such distribution.

" **Averaging Period** " has the meaning specified in Section 10.04(e).

" **Bankruptcy Law** " has the meaning specified in Section 6.01.

" **Bid Solicitation Agent** " means the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 10.01(b)(4). The Company shall initially act as the Bid Solicitation Agent. The Company may appoint a replacement Bid Solicitation Agent (including any of the Company's Affiliates) without prior notice to the Holders (but will provide notice thereof 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 be closed.

" **Capital Stock** " of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

" **Cash Settlement** " has the meaning set forth in Section 10.02(b).

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

" **Closing Sale Price** " per share of the Common Stock or any other security for which a Closing Sale Price must be determined on any Trading Date means:

(1) the closing sale price per share of the Common Stock or such other security (or if no closing sale price is reported, the average of the closing bid and closing ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such Trading Day as reported in composite transactions for the Relevant Stock Exchange;

(2) if the Common Stock or such other security is not listed on a Relevant Stock Exchange on such date, the last quoted bid price per share for the Common Stock or such other security in the over-the-counter market on such Trading Day as reported by OTC Markets Group Inc. or a similar organization; or

(3) if the Common Stock or such other security is not so quoted, the average of the mid-point of the closing bid and closing ask price per share for the Common Stock on such Trading Day as determined by a nationally recognized securities dealer retained by the Company for that purpose, which may include any of the Underwriters.

The Closing Sale Price shall be determined without reference to early hours, after hours or extended market trading.

" **Combination Settlement** " has the meaning set forth in Section 10.02(b).

" **Common Stock** " means the common stock, par value $0.01 per share, of the Company, or such other capital stock into which the Company's common stock is reclassified or changed pursuant to Section 10.05.

" **Company** " means the party named as such in the Indenture until a successor replaces it and, thereafter, means the successor.

" **Conversion Agent** " means the Person appointed by the Company to which Notes may be presented for conversion. The Conversion Agent appointed by the Company shall initially be the Trustee.

" **Conversion Date** " has the meaning specified in Section 10.02(a).

" **Conversion Notice** " has the meaning specified in Section 10.02(a).

" **Conversion Obligation** " has the meaning specified in Section 10.01(a).

" **Conversion Price** " on any date of determination means $1,000 divided by the Conversion Rate as of such date.

" **Conversion Rate** " shall initially be 13.2569 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment as provided in Article 10.

" **Corporate Trust Office** " or other similar term, means the designated office of the Trustee at which at any particular time its corporate trust business as it relates to the Indenture shall be administered, which office is, at the date as of which the Indenture is dated, located at 214 N. Tryon Street, 27th Floor, Charlotte, NC 28202 Attention: Exact Sciences Corporation Administrator or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

" **Custodian** " has the meaning specified in Section 6.01.

" **Daily Conversion Value** " means, for each of the 30 consecutive VWAP Trading Days during the applicable Observation Period, 1/30th of the product of:

(1) the Conversion Rate in effect on that VWAP Trading Day, and

(2) the Daily VWAP of the Common Stock on that VWAP Trading Day.

" **Daily Measurement Value** " means Specified Dollar Amount divided by 30.

" **Daily Settlement Amount** " for each of the 30 consecutive VWAP Trading Days during the relevant Observation Period, shall consist of:

(1) cash equal to the lesser of (A) the Daily Measurement Value and (B) the Daily Conversion Value on such VWAP Trading Day; and

(2) if the Daily Conversion Value on such VWAP Trading Day 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 30 consecutive VWAP Trading Days during the applicable Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "EXAS <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 reasonably 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 which is, or after notice or passage of time or both would be, an Event of Default.

" **Defaulted Interest** " has the meaning specified in Section 2.06.

" **Depositary** " means the clearing agency registered under the Exchange Act that is designated to act as the Depositary for the Global Notes. DTC shall be the initial Depositary, until a successor shall have been appointed and become such pursuant to the applicable provisions of the Indenture, and thereafter, "Depositary" shall mean or include such successor.

" **DTC** " means The Depository Trust Company.

" **Effective Date** " has the meaning specified in Section 10.03, except that, as used in Section 10.04, " **Effective Date** " means the first date on which the shares of Common Stock trade on the Relevant Stock Exchange, regular way, reflecting the relevant share split or share combination, as applicable.

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

" **Ex-Dividend Date** " means the first date on which the shares of 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 from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number shall not be considered "regular way" for this purpose.

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

" **Expiration Date** " has the meaning specified in Section 10.04(e).

" **Fundamental Change** " shall be deemed to have occurred when any of the following has occurred:

(1) a "person" or "group," other than the Company and 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 becomes the "beneficial owner" (as these terms are defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the Company's Capital Stock that is at the time entitled to vote by the holder thereof in the election of the Board of Directors (or comparable body);

(2) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities or other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock shall be converted into cash, securities or other property or assets (or any combination thereof); 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 of the Company's Wholly Owned Subsidiaries; *provided* , *however* , that neither (a) a transaction described in clause (B) in which the holders of all classes of the Company's common equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction nor (b) any reorganization or merger of the Company solely for the purpose of changing its jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity shall be a fundamental change pursuant to this clause (2);

(3) the adoption of a plan relating to the Company's liquidation or dissolution; or

(4) the Common Stock or other shares of Capital Stock or Reference Property into which the Notes are convertible is neither listed for trading on The New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors);

provided , *however* , that any transaction or event described above shall not constitute a Fundamental Change if, in connection with such transaction or event, or as a result therefrom, a transaction described in clause (1) or (2) above occurs and at least 90% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) consists of shares of common stock traded on any of The New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors) (or shall be so traded or quoted immediately following the completion of the merger or consolidation or such other transaction) and, as a result of such transaction, the Notes become convertible into a combination of cash (in respect of an amount up to, and including, the principal portion of such Notes) and Reference Property comprised of such consideration as described under Section 10.05.

" **Fundamental Change Company Notice** " has the meaning specified in Section 3.01(b).

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

“ **Fundamental Change Repurchase Expiration Time** ” has the meaning specified in Section 3.01(a)(1).

“ **Fundamental Change Repurchase Notice** ” has the meaning specified in Section 3.01(a)(1).

“ **Fundamental Change Repurchase Price** ” has the meaning specified in Section 3.01(a).

“ **Global Notes** ” has the meaning specified in Section 2.02.

“ **Holder** ” means the Person in whose name a Note is registered on the Registrar’s books.

“ **interest** ” means, when used with reference to the Notes, any interest payable under the terms of the Notes, including Defaulted Interest, if any, and Additional Interest, if any.

“ **Interest Payment Date** ” has the meaning specified in Section 2.03(c).

“ **Make-Whole Fundamental Change** ” has the meaning specified in Section 10.03.

“ **Market Disruption Event** ” means (1) a failure by the Relevant Stock Exchange to open for trading during its regular trading session; or (2) 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 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 Stock Exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“ **Maturity Date** ” means January 15, 2025.

“ **Measurement Period** ” has the meaning specified in Section 10.01(b)(4).

“ **Merger Event** ” has the meaning specified in Section 10.05.

“ **Notes** ” means any Notes issued, authenticated and delivered under the Indenture, including any Global Notes.

“ **Notice of Default** ” has the meaning specified in Section 6.01.

“ **Observation Period** ” means, with respect to any Note surrendered for conversion:

(1) if the relevant Conversion Date occurs prior to July 15, 2024, the 30 consecutive VWAP Trading Day period beginning on, and including, the second VWAP Trading Day immediately succeeding such Conversion Date; or

(2) if the relevant Conversion Date occurs on or after July 15, 2024, the 30 consecutive VWAP Trading Day period beginning on, and including, the 32 nd Scheduled Trading Day immediately preceding the Maturity Date.

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

" **Opinion of Counsel** " means a written opinion from legal counsel, who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

" **Person** " means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

" **Physical Settlement** " has the meaning set forth in Section 10.02(b).

" **Preferred Stock** ", as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

" **Preliminary Prospectus Supplement** " means the Preliminary Prospectus Supplement, dated January 11, 2018, relating to the offering and sale by the Company of the Notes.

" **protected purchaser** " has the meaning specified in Section 2.05.

" **Record Date** " means, in respect of a dividend or distribution to holders of Common Stock, the date fixed for determination of holders of Common Stock entitled to receive such dividend or distribution.

" **Reference Property** " has the meaning specified in Section 10.05.

" **Regular Record Date** " means, with respect to any Interest Payment Date on the Notes, the January 1 and July 1 (whether or not a Business Day) preceding the applicable January 15 and July 15 Interest Payment Date, respectively.

" **Relevant Stock Exchange** " means the Nasdaq Capital Market or, if the Common Stock is not then listed on the Nasdaq Capital Market, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed.

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

" **Schedule TO** " means a Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Exchange Act.

" **Scheduled Trading Day** " means a day that is scheduled to be a Trading Day on the Relevant Stock Exchange. If the Common Stock is not so listed or admitted for trading, "Scheduled Trading Day" means a Business Day.

" **SEC** " means the Securities and Exchange Commission.

" **Securities Act** " means the Securities Act of 1933, as amended.

" **Settlement Amount** " has the meaning set forth in Section 10.02(b)(iii).

" **Settlement Method** " means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

" **Significant Subsidiary** " with respect to any Person means any Subsidiary of such Person that constitutes a "significant subsidiary" within the meaning of Rule 1-02(w) under Regulation S-X under the Exchange Act; provided that, in the case of a Subsidiary that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless the Subsidiary's income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle, exclusive of amounts attributable to any non-controlling interests, for the last completed fiscal year prior to the date of such determination exceeds $25,000,000.

" **Special Interest Payment Date** " has the meaning specified in Section 2.06(a).

" **Special Record Date** " has the meaning specified in Section 2.06(a).

" **Specified Dollar Amount** " means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion as specified (or deemed specified) by the Company in the notice specifying the Company's chosen Settlement Method.

" **Spin-off** " has the meaning specified in Section 10.04(c).

" **Stock Price** " means, with respect to any Make-Whole Fundamental Change:

(1) if holders of the Common Stock receive only cash in such Make-Whole Fundamental Change, the cash amount paid (or deemed paid) per share; or

(2) otherwise, the average of the Closing Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change.

" **Subsidiary** " of any Person means any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital

Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of such Person.

" **Successor Company** " has the meaning specified in Section 5.01(a).

" **Trading Day** " means a day on which:

(1) trading in the Common Stock generally occurs on the Relevant Stock Exchange or, if the Common Stock is not then listed on a Relevant Stock Exchange, on the principal other market on which the Common Stock is then traded; and

(2) a Closing Sale Price for the Common Stock is available on such securities exchange or market.

If the Common Stock is not so listed or traded, "Trading Day" means a Business Day.

" **Trading Price** " of the Notes on any date of determination means the average of the secondary market bid quotations per $1,000 principal amount of Notes obtained by the Bid Solicitation Agent for $5,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company for this purpose, which may include one or more of the Underwriters; *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, then that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for $5,000,000 principal amount of the Notes from a nationally recognized securities dealer or, in its reasonable judgment, the bid quotations are not indicative of the secondary market value of the Notes, then, for purposes of the Trading Price conversion contingency described in Section 10.01(b)(4) only, the Trading Price of the Notes shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on such Trading Day. If (x) the Company is not acting as the Bid Solicitation Agent, and the Company does not instruct the Bid Solicitation Agent to obtain bids when required (as described in Section 10.01(b)(4)), or if the Company so instructs the Bid Solicitation Agent but the Bid Solicitation Agent fails to carry out such instruction or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination, then, in either case, the Trading Price per $1,000 principal amount of the Notes shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on each day the Bid Solicitation Agent or the Company, as applicable, fails to do so.

" **Trigger Event** " has the meaning specified in Section 10.04(c).

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

" **Trustee** " means the party named as such in the Indenture until a successor replaces it and, thereafter, means the successor.

" **Underwriters** " means Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canaccord Genuity Inc., Cowen and Company, LLC, Leerink Partners LLC and William Blair & Company, L.L.C.

" **Underwriting Agreement** " means the Underwriting Agreement dated January 11, 2018 between the Company and the Underwriters relating to the offer and sale of the Notes.

" **Uniform Commercial Code** " means the New York Uniform Commercial Code as in effect from time to time.

" **Valuation Period** " has the meaning specified in Section 10.04(c).

" **VWAP Trading Day** " means a day on which:

(1) there is no Market Disruption Event; and

(2) trading in the Common Stock generally occurs on the Relevant Stock Exchange.

If the Common Stock is not so listed or admitted for trading on any Relevant Stock Exchange, "VWAP Trading Day" means a "Business Day."

" **Wholly Owned Subsidiary** " means a Subsidiary of the Company, all the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or another Wholly Owned Subsidiary.

ARTICLE 2

The Notes

SECTION 2.01. Designation, Amount and Issuance of Notes . The Notes shall be designated as "1.0% Convertible Senior Notes due 2025." The Notes shall not exceed the aggregate principal amount of $690,000,000 (except pursuant to this Section or Sections 3.4 and 3.6 of the Base Indenture). Upon the execution of the Indenture, or from time to time thereafter, Notes may be executed by the Company and delivered to the Trustee for authentication.

The Company may, without the consent of, or notice to, Holders, issue additional Notes hereunder in the future on the same terms and conditions of the Notes issued hereunder (other than differences in the issue price and interest accrued prior to the issue date of such additional Notes) in an unlimited aggregate principal amount (such additional Notes, the " **Additional Notes** "); *provided* that if any such Additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes, such Additional Notes will have one or more separate CUSIP numbers. The Notes initially issued hereunder and any such Additional Notes shall rank equally and ratably and shall be treated as a single series for all purposes under the Indenture. The Company may not issue any Additional Notes if any Event of Default has occurred with respect to the Notes.

SECTION 2.02. Form of the Notes . The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A hereto. The terms and provisions contained in the form of Notes attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of the Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of the Indenture, expressly agree to such terms and provisions and to be bound thereby.

So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, or otherwise contemplated by Section 2.04, all of the Notes shall be evidenced by one or more Notes in global form registered in the name of the Depositary or the nominee of the Depositary (the " **Global Notes** "). The transfer and exchange of beneficial interests in any such Global Notes shall be effected through the Depositary in accordance with the Indenture and the applicable procedures of the Depositary. Except as provided in Section 2.04, beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, shall not receive or be entitled to receive physical delivery of certificates in definitive registered form and shall not be considered holders of such Global Note.

SECTION 2.03. Date and Denomination of Notes; Payment at Maturity; Payment of Interest .

(a) Date and Denomination . The Notes shall be issuable in registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples of $1,000 in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the Notes.

(b) Payment at Maturity . Each Holder shall be entitled to receive on the Maturity Date, per $1,000 principal amount of Notes, $1,000 in cash, together with accrued and unpaid interest thereon to, but excluding, the Maturity Date, unless such Note is earlier converted or repurchased. With respect to Global Notes, the Company shall pay or cause the Paying Agent to pay principal and any interest to the Depositary in immediately available funds. With respect to any certificated Notes, principal and any interest shall be payable at the Company's office or agency, which initially shall be the Corporate Trust Office of the Trustee.

(c) Payment of Interest . Interest on the Notes shall accrue at the rate of 1.0% per annum from January 17, 2018 or from the most recent date to which interest has been paid or duly provided for. Interest shall be payable in arrears on January 15 and July 15 of each year (each, an " **Interest Payment Date** "), commencing July 15, 2018, to the Person in whose name any Note is registered as it appears on the Register at the Close of Business on the applicable Regular Record Date; *provided* , *however* , as and to the extent provided in Section 10.02(d), if a Holder converts any Notes after the Close of Business on the Regular Record Date but prior to the corresponding Interest Payment Date, interest shall be payable, on the earlier of the corresponding Interest Payment Date and the date the Company delivers the Settlement Amount in respect of such conversion, to the Person in whose name any Note is registered as it appears on the Register at the Close of Business on the applicable Regular Record Date.

Interest on the Notes shall be calculated on the basis of a 360-day year consisting of twelve 30-day months and, for partial months, on the number of days actually elapsed in a 30-day month.

The Company shall pay or cause the Paying Agent to pay interest on:

(1) any Global Notes to the Depositary in immediately available funds;

(2) any Notes in certificated form having a principal amount of less than $2,000,000 by check mailed to the address of the Person in whose name such Notes are registered as it appears in the Register; and

(3) any Notes in certificated form having a principal amount of $2,000,000 or more, either by check mailed to the address of the Person in whose name such Notes are registered as it appears in the Register or, upon application by such Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary.

SECTION 2.04. Exchange of Global Notes . The following provisions shall apply only to Global Notes:

(a) Each Global Note authenticated under the Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian for the Global Notes therefor, and each such Global Note shall constitute a single Note for all purposes of the Indenture.

(b) Notwithstanding any other provision in the Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless:

(i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note and a successor Depositary has not been appointed within 60 days;

(ii) the Depositary has ceased to be registered as a clearing agency under the Exchange Act and a successor Depositary has not been appointed within 60 days; or

(iii) an Event of Default with respect to the Notes has occurred and is continuing and such beneficial owner requests that its Notes be issued in physical, certificated form.

(c) In addition, certificated Notes shall be issued in exchange for beneficial interests in a Global Note upon request by or on behalf of the Depositary in accordance with customary procedures following the request of a beneficial owner seeking to enforce its rights

under the Notes or the Indenture, including its rights following the occurrence of an Event of Default.

(d) Notes issued in exchange for a Global Note or for any portion of a Global Note pursuant to clause (ii) or (iii) above shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Notes or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Notes to be exchanged shall be surrendered by the Depositary to the Trustee, as Registrar; *provided* that pending completion of the exchange of a Global Note, the Trustee acting as custodian of the Global Notes for the Depositary or its nominee with respect to such Global Notes, shall reduce the principal amount thereof, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the books and records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Notes issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

(e) In the event of the occurrence of any of the events specified in clause (ii) above or upon any request described in clause (iii) above, the Company shall promptly make available to the Trustee a sufficient supply of certificated Notes in definitive, fully registered form, without interest coupons.

(f) Neither any members of, or participants in, the Depositary (the " **Agent Members** ") nor any other Persons on whose behalf Agent Members may act shall have any rights under the Indenture with respect to any Global Notes registered in the name of the Depositary or any nominee thereof, 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 Notes for all purposes whatsoever. 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 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 Notes.

(g) At such time as all interests in a Global Note have been repurchased, converted, cancelled or exchanged for Notes in certificated form, such Global Note shall, upon receipt thereof, be cancelled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the custodian for the Global Note. At any time prior to such cancellation, if any interest in a Global Note is repurchased, converted, cancelled or exchanged for Notes in certificated form, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the custodian for the Global Note, be appropriately reduced, and an endorsement shall be made on such Global Note, by the Trustee or the custodian for the Global Note, at the direction of the Trustee, to reflect such reduction.

SECTION 2.05. Outstanding Notes . Notes outstanding at any time are all Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 3.6 of the Base Indenture, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If the Paying Agent segregates and holds in trust, in accordance with the Indenture, on a Fundamental Change Repurchase Date or Maturity Date money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be repurchased or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of the Indenture, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.06. Defaulted Interest . Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 calendar days, shall forthwith cease to be payable to the Holder on the Regular Record Date, and such defaulted interest and interest (to the extent lawful) on such defaulted interest at the annual rate borne by the Notes (such defaulted interest and interest thereon herein collectively called " **Defaulted Interest** ") shall be paid by the Company at its election, in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the Close of Business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 calendar days after such notice) of the proposed payment (the " **Special Interest Payment Date** "), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Company shall fix a record date (the " **Special Record Date** ") for the payment of such Defaulted Interest which shall be not more than fifteen calendar days and not less than ten calendar days prior to the Special Interest Payment Date and not less than ten calendar days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date and shall promptly cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given to each Holder, not less than ten calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Notes (or their respective predecessor

Notes) are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section 2.06, each Note delivered under the Indenture upon registration of, transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.07. Ranking . The Notes constitute a senior general unsecured obligation of the Company, ranking equally in right of payment with all existing and future senior unsecured indebtedness of the Company and ranking senior in right of payment to any future indebtedness of the Company that is expressly made subordinate to the Notes by the terms of such indebtedness.

ARTICLE 3

Repurchase of Notes

SECTION 3.01. Repurchase at Option of Holders Upon a Fundamental Change . (a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right to require the Company to repurchase all or part of such Holder's Notes in a principal amount thereof that is equal to $1,000 in principal amount or whole multiples of $1,000 in excess thereof, on the date (the " **Fundamental Change Repurchase Date** ") specified by the Company in the Fundamental Change Company Notice that is not less than 20 nor more than 35 Business Days after the date of the Fundamental Change Company Notice at a repurchase price, payable in cash, equal to 100% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest to, but excluding, the Fundamental Change Repurchase Date (the " **Fundamental Change Repurchase Price** "). However, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the full amount of interest due shall be paid on the Interest Payment Date to the Holder of record on the Regular Record Date and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law as a result of changes to such applicable law occurring after the date of the Indenture. Repurchases of Notes under this Section 3.01 shall be made upon:

(1) delivery to the Paying Agent by a Holder of a duly completed notice (the " **Fundamental Change Repurchase Notice** ") in the form set forth on the reverse of the Note prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date (the " **Fundamental Change Repurchase Expiration Time** "); and

(2) delivery or book-entry transfer of the Notes to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent (which, if the Trustee is acting as the Paying Agent, shall be the Corporate Trust Office), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3.01 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(i) with respect to Global Notes, the appropriate Depositary information and, with respect to certificated Notes, the certificate numbers, if any, of the Notes to be tendered for repurchase;

(ii) the portion of the principal amount of the Notes to be repurchased, which must be $1,000 or whole multiples of $1,000 in excess thereof; and

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

Payment of the Fundamental Change Repurchase Price for Notes for which a Fundamental Change Repurchase Notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Notes, together with necessary endorsements, to the Paying Agent, as the case may be. Payment of the Fundamental Change Repurchase Price for the Notes shall be made promptly following the later of the Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the Notes, as the case may be.

All questions as to the validity, eligibility (including time of receipt) and acceptance of any Notes for repurchase shall be determined by the Company, whose determination shall be final and binding absent manifest error.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.01 shall have the right to withdraw such Fundamental Change Repurchase Notice at any time prior to the Fundamental Change Repurchase Expiration Time by delivering a written notice of withdrawal to the Paying Agent in accordance with Section 3.02 below.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(b) On or before the tenth Business Day after the occurrence of a Fundamental Change, the Company shall provide to all Holders on the date of the Fundamental Change at their addresses shown in the Register of the Registrar and to beneficial owners to the extent required by applicable law, the Trustee and the Paying Agent appointed in connection with the Fundamental Change a written notice (the " **Fundamental Change Company Notice** ") of the occurrence of the Fundamental Change and the resulting repurchase right.

Each Fundamental Change Company Notice shall specify, among other things:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the Fundamental Change Repurchase Date;

(iv) the last date on which a repurchase upon a Fundamental Change may be exercised, which shall be the Business Day immediately preceding the Fundamental Change Repurchase Date;

(v) the Fundamental Change Repurchase Price;

(vi) the names and addresses of the Paying Agent and the Conversion Agent;

(vii) the procedures that a Holder must follow to exercise the right to repurchase upon a Fundamental Change;

(viii) that the Fundamental Change Repurchase Price for any Notes as to which a Fundamental Change Repurchase Notice has been given and not withdrawn shall be paid on the later of such Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the Notes (together with all necessary endorsements);

(ix) that, except as otherwise provided herein with respect to a Fundamental Change Repurchase Date that is after a Regular Record Date for the payment of an installment of interest and on or before the related Interest Payment Date, on and after such Fundamental Change Repurchase Date (unless there shall be a Default in the payment of the Fundamental Change Repurchase Price), interest on Notes subject to repurchase upon Fundamental Change shall cease to accrue, and all rights of the Holders of such Notes shall terminate, other than the right to receive, in accordance herewith, the Fundamental Change Repurchase Price;

(x) that a Holder shall be entitled to withdraw its election in the Fundamental Change Repurchase Notice prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, by means of a letter or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth the name of such Holder, a statement that such Holder is withdrawing its election to have Notes purchased by the Company on such Fundamental Change Repurchase Date pursuant to a repurchase upon a Fundamental Change, the certificate number(s) of such Notes to be so withdrawn, if such Notes are certificated Notes, the principal amount of the Notes of such Holder to be so withdrawn, which amount must be $1,000 or an integral multiple thereof and the principal amount, if any, of the Notes of such Holder that remain subject to the Fundamental Change Repurchase Notice delivered by such Holder in accordance with this Section 3.01, which amount must be $1,000 or an integral multiple thereof; *provided* , *however* , that if there shall be a Default in the payment of the Fundamental Change Repurchase Price, a Holder shall be

entitled to withdraw its election in the Fundamental Change Repurchase Notice at any time during which such Default is continuing;

(xi) the Conversion Rate and any adjustments to the Conversion Rate that shall result from such Fundamental Change;

(xii) that Notes with respect to which a Fundamental Change Repurchase Notice is given by a Holder may be converted pursuant to Article 10 only if such Fundamental Change Repurchase Notice has been withdrawn in accordance with Section 3.02 or the Company defaults in the payment of the Fundamental Change Repurchase Price;

(xiii) the CUSIP number or numbers, as the case may be, of the Notes; and

(xiv) the procedures that Holders must follow to require the Company to repurchase their Notes.

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

(c) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Repurchase Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes).

(d) The Company shall not be required to purchase, or make an offer to purchase, the Notes upon the occurrence of a Fundamental Change otherwise required under this Section 3.01 if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements set forth in the Indenture applicable to such an offer by the Company, and such third party purchases all Notes properly surrendered and not validly withdrawn upon such offer in the same manner, at the same time and otherwise in compliance with such requirements.

(e) The Company shall not be required to give such notice or repurchase the Notes as described in this Section 3.01 upon a Fundamental Change pursuant to clause (2) of the definition thereof if (1) such Fundamental Change results in the Notes becoming convertible (pursuant to the Section 10.05) into an amount of cash per Note greater than the Fundamental Change Repurchase Price (assuming the maximum amount of accrued interest would be payable based on the latest possible Fundamental Change Repurchase Date) and (2) the Company provides timely notice of the Holders' right to convert their Notes based on such Fundamental Change as described under Section 10.01(b)(2).

SECTION 3.02. Withdrawal of Fundamental Change Repurchase Notice . A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of

withdrawal delivered to the office of the Paying Agent (which, if the Trustee is acting as the Paying Agent, shall be the Corporate Trust Office) in accordance with the Fundamental Change Repurchase Notice at any time prior to the Fundamental Change Repurchase Expiration Time, specifying:

(1) with respect to Global Notes, the appropriate Depositary information and, with respect to certificated Notes, the certificate number, if any, of the withdrawn Notes;

(2) the principal amount of the withdrawn Notes (which must be $1,000 or an integral multiple thereof); and

(3) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or integral multiples of $1,000 in excess thereof.

SECTION 3.03. Deposit of Fundamental Change Repurchase Price. Prior to 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Company shall deposit with the Paying Agent or, if the Company or a Wholly Owned Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 9.3 of the Base Indenture, an amount of cash in immediately available funds, sufficient to pay the aggregate Fundamental Change Repurchase Price of all the Notes or portions thereof that are to be repurchased as of the Fundamental Change Repurchase Date.

If the Paying Agent holds on the Fundamental Change Repurchase Date cash sufficient to pay the Fundamental Change Repurchase Price of the Notes that Holders have elected to require the Company to repurchase in accordance with Section 3.01, then, as of the Fundamental Change Repurchase Date:

(i) such Notes shall cease to be outstanding and interest shall cease to accrue, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Paying Agent, as the case may be; and

(ii) all other rights of the Holders of such Notes shall terminate, other than the right to receive the Fundamental Change Repurchase Price upon delivery or transfer of the Notes.

SECTION 3.04. Notes Repurchased in Part. Upon presentation of any Notes repurchased only in part, the Company shall execute and the Trustee shall authenticate and make available for delivery to the Holder thereof, at the expense of the Company, a new Note or Notes, of any authorized denomination, in aggregate principal amount equal to the unrepurchased portion of the Notes presented.

SECTION 3.05. Covenant to Comply with Securities Laws Upon Repurchase of Notes. In connection with any repurchase upon a Fundamental Change, the Company shall, to the extent applicable, (i) comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act that may be applicable at the time of the offer to repurchase the Notes; (ii) file a Schedule TO or any other schedule required in connection with any offer by the

Company to repurchase the Notes; and (iii) comply with all other federal and state securities laws in connection with any offer by the Company to repurchase the Notes.

ARTICLE 4

Covenants

Article IX of the Base Indenture is hereby supplemented, with respect to the Notes, to add or replace the following covenants, as indicated :

SECTION 4.01. Payment of Notes . *The following covenant replaces Section 9.1 of the Base Indenture with respect to the Notes* : The Company shall promptly pay the principal (including the Fundamental Change Repurchase Price, if applicable) of, the Settlement Amount owed on conversion, and interest on the Notes on the dates and in the manner provided in the Notes and in the Indenture. Principal, Settlement Amount and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with the Indenture money sufficient to pay all principal, Settlement Amount and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of the Indenture.

The Company shall pay interest on overdue principal (including the Fundamental Change Repurchase Price, if applicable) and Settlement Amount owed on conversion to the extent it includes cash, at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the rate and in the manner specified in Section 2.06.

SECTION 4.02. Maintenance of Office or Agency . *The following covenant replaces Section 9.2 of the Base Indenture with respect to the Notes* : The Company shall maintain an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion or repurchase and where notices and demands to or upon the Company in respect of the Notes and the Indenture may be made. As of the date of the Indenture, such office is located at the Corporate Trust Office of the Trustee and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Company. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. 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 at the Corporate Trust Office; *provided* that the Corporate Trust Office shall not be an office or agency of the Company for the purpose of service of legal process against the Company.

The Company may also from time to time designate co-registrars and one or more 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. The Company shall 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.

SECTION 4.03. Reports . *The following covenant replaces Section 9.5 of the Base Indenture with respect to the Notes* :

(a) The Company shall file with the Trustee any documents or reports it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act within 15 days after the same are required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 or any successor rule under the Exchange Act). Any document or report that the Company files with the SEC via the SEC's EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee as of the time such documents are filed via EDGAR (or such successor). The Trustee shall have no obligation to determine if and when the Company's statements or reports are publicly available and/or accessible electronically. Notwithstanding anything to the contrary, the Company shall in no event be required to file with, or otherwise provide or disclose to, the Trustee or any Holder any information for which the Company is seeking, or has received, confidential treatment from the SEC.

(b) Delivery of the reports and documents delivered under the Indenture to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants under the Indenture (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

SECTION 4.04. Compliance Certificate . *The following covenant replaces Section 9.6 of the Base Indenture with respect to the Notes* : The Company shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company (beginning with the fiscal year ended December 31, 2018) an Officer's Certificate, stating whether or not, to the knowledge of the Officer (such Officer being one of the principal executive, financial or accounting officers of the Company) executing such Officer's Certificate, any Default or Event of Default occurred during such period and if so, describing each Default or Event of Default, its status and the action the Company is taking or proposes to take with respect thereto. Such Officer's Certificate shall also contain a certification from such Officer that the Company has complied with all conditions and covenants under the Indenture.

SECTION 4.05. Statement by Officer as to Default . The Company shall deliver to the Trustee, promptly and in any event 10 calendar days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action which the Company proposes to take with respect thereto.

SECTION 4.06. Waiver of Stay, Extension or Usury Laws . The Company covenants (to the extent it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time; the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder,

delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 5

Successor Company

Article VII of the Base Indenture is hereby replaced in full, solely with respect to the Notes, with the following :

SECTION 5.01. When Company May Merge or Transfer Assets . The Company shall not, in a single transaction or a series of related transactions, consolidate with or merge with or into any other Person or sell, convey, transfer, lease or otherwise dispose of all or substantially all of the property and assets of the Company and its Subsidiaries taken as a whole to another Person, unless:

(a) either (i) the Company is the continuing corporation or (ii) the resulting, surviving or transferee Person (if other than the Company) (the " **Successor Company** ") is a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia and such Person assumes, by a supplemental indenture, all of the Company's obligations under the Notes and the Indenture;

(b) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing; and

(c) the Company has delivered to the Trustee the Officer's Certificate and Opinion of Counsel pursuant to Section 5.03.

SECTION 5.02. Successor to Be Substituted . In case of any such transaction described in Section 5.01 other than a lease in which the Company is not the surviving corporation and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of and interest on all of the Notes, and the due and punctual performance and observance of all of the covenants and conditions of the Indenture to be performed or satisfied by the Company, such Successor Company shall succeed, and be substituted for, and may exercise every right and power of, the Company, and Exact Sciences Corporation shall be discharged from its obligations under the Notes and the Indenture, except in the case of a lease. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of Exact Sciences Corporation any or all of the Notes, issuable hereunder that 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 the 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 the Indenture as the Notes theretofore or thereafter issued in accordance with the terms of the Indenture as though all of

such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance, transfer or other disposition, upon compliance with this Article 5, the Person named as the "Company" in the first paragraph of the Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 5 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be discharged from its liabilities as obligor and maker of the Notes and from its obligations under the Indenture.

SECTION 5.03. Opinion of Counsel to Be Given Trustee . Prior to execution of any supplemental indenture pursuant to this Article 5, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer, lease or other disposition and any such assumption complies with the provisions of this Article 5.

ARTICLE 6

Defaults and Remedies

Article V of the Base Indenture is hereby replaced in full, solely with respect to the Notes, with the following :

SECTION 6.01. Events of Default . An " **Event of Default** " occurs if:

(a) the Company fails to pay any interest on the Notes when due and such failure continues for a period of 30 calendar days;

(b) the Company fails to pay principal of the Notes when due at maturity, or the Company fails to pay the Fundamental Change Repurchase Price payable, in respect of any Notes when due;

(c) the Company fails to comply with its obligations to convert any Notes in accordance with the Indenture, and such failure continues for five Business Days following the scheduled settlement date for such conversion;

(d) the Company fails to comply with Article 5;

(e) the Company fails to provide notice of any transaction described under Section 10.01(b)(2);

(f) the Company fails to provide notice of a Fundamental Change when due pursuant to Sections 3.01(b) or 10.01(b)(3), in each case;

(g) the Company fails to perform or observe any term, covenant or agreement in the Notes or the Indenture (other than a covenant or agreement a default in whose performance or whose breach is elsewhere in this Section 6.01 specifically dealt with) for a period of 60 consecutive calendar days after the written notice specified below is given by the Trustee to the Company or by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding to the Company and the Trustee, as the case may be;

(h) the failure to pay when due (whether at stated maturity or otherwise) or a default that results in the acceleration of maturity, of any indebtedness for borrowed money of the Company or any of its Subsidiaries in an aggregate amount in excess of $50,000,000 (or its foreign currency equivalent), unless such indebtedness is paid or discharged, or such acceleration is rescinded, stayed or annulled, within a period of 30 calendar days after the written notice specified below is given by the Trustee to the Company or by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding to the Company and the Trustee, as the case may be;

(i) a final judgment for the payment in excess of $50,000,000 (or its foreign currency equivalent) (excluding any amounts covered by insurance) rendered against the Company or any Subsidiary of the Company, which judgment is not paid, discharged, bonded, waived or stayed within 60 calendar days after (A) the date on which the right to appeal or petition for review thereof has expired if no such appeal or review has commenced, or (B) the date on which all rights to appeal or petition for review have been extinguished;

(j) the Company or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:

(1) commences a voluntary case;

(2) consents to the entry of an order for relief against it in an involuntary case;

(3) consents to the appointment of a Custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors; or

(5) or takes any comparable action under any foreign laws relating to insolvency; or

(k) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case;

(2) appoints a Custodian of the Company or any of its Significant Subsidiaries or for any substantial part of its property;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) any similar relief is granted under any foreign laws,

and in any case of the foregoing clauses (1) through (4), such order or decree shall have remained unstayed and in effect for 60 calendar days.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term " **Bankruptcy Law** " means Title 11, United States Code , or any similar federal or state law for the relief of debtors. The term " **Custodian** " means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (g) or (h) of this Section 6.01 is not an Event of Default until the Trustee notifies the Company or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding notify the Company and the Trustee, as the case may be, of the Default and the Company does not cure such Default within the time specified in clause (g) or (h) of this Section 6.01, as applicable, after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a " **Notice of Default** ".

SECTION 6.02. Acceleration . If an Event of Default (other than an Event of Default specified in Section 6.01(j) or (k) with respect to the Company) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the outstanding Notes by written notice to the Company and the Trustee, may declare the principal amount of the Notes and accrued and unpaid interest on the outstanding Notes to be due and payable. If an Event of Default specified in Section 6.01(j) or (k) with respect to the Company (and not involving solely one or more of the Company's Significant Subsidiaries) occurs and is continuing, the principal amount of the Notes and accrued and unpaid interest on the outstanding Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

After a declaration of acceleration, but before a judgment or decree for payment of the money due has been obtained by the Trustee, the Holders of a majority in aggregate principal amount of the Notes outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration if:

(a) the Company has paid (or deposited with the Trustee a sum sufficient to pay):

(1) all overdue interest on all Notes;

(2) the principal amount of any Notes that have become due otherwise than by such declaration of acceleration;

(3) to the extent that payment of such interest is lawful, interest upon overdue interest; and

(4) all sums paid or advanced by the Trustee under the Indenture and the compensation and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel; and

(b) all Events of Default, other than the non-payment of the principal amount of the Notes and any accrued and unpaid interest that have become due solely by such declaration of acceleration or the failure to deliver consideration upon conversion, have been cured or waived.

No such rescission and annulment shall affect any subsequent Default or Event of Default or impair any right consequent thereon.

SECTION 6.03. Other Remedies . If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults . Subject to Section 6.02, the Holders of a majority in aggregate principal amount of the Notes outstanding may, on behalf of all Holders of all the Notes, waive any existing and past Default or Event of Default under the Indenture and its consequences, except:

(i) the Company's failure to pay principal of or interest on any Notes when due;

(ii) the Company's failure to convert any Notes into cash and, if applicable, Common Stock pursuant to the terms of the Indenture;

(iii) the Company's failure to pay the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date in connection with a Holder exercising its repurchase rights; or

(iv) the Company's failure to comply with any of the provisions of the Indenture that under Section 9.02 cannot be amended without the consent of each Holder affected.

When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. Control by Majority . The Holders of a majority in aggregate principal amount of the outstanding Notes shall have the right to direct the time, method and place of any proceedings for any remedy available to the Trustee or the exercise of any other right or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture or, subject to Section 6.01 of the Base Indenture, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability or expense for which the Trustee has not received

adequate indemnity as determined by it in good faith; *provided* , *however* , that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnity or security satisfactory to it in its sole discretion against all losses, liabilities, and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits . Except to enforce the right to receive payment of principal or interest when due or consideration due upon conversion when due, no Holder may pursue any remedy with respect to the Indenture or the Notes unless:

(a) such Holder has given the Trustee written notice of an Event of Default;

(b) the Holders of at least 25% in aggregate principal amount of the outstanding Notes have made a written request to the Trustee to pursue the remedy, and offered security or indemnity against any costs, liability or expense of the Trustee satisfactory to the Trustee;

(c) the Trustee fails to comply with such request within 60 calendar days after receipt of such request and offer of indemnity; and

(d) the Trustee has not received an inconsistent direction from the Holders of a majority in aggregate principal amount of the outstanding Notes.

A Holder may not use the Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the Trustee shall not have any affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.07. Rights of Holders to Receive Payment . Notwithstanding any other provision of the Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in the Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee . If an Event of Default specified in Section 6.01(a), (b) or (c) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 6.8 of the Base Indenture.

SECTION 6.09. Trustee May File Proofs of Claim . In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under title 11 of the United States Code, or any other applicable law, or in case a Custodian shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial

proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.09, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 6.8 of the Base Indenture; and any Custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section Section 6.8 of the Base Indenture, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 6.8 of the Base Indenture;

SECOND: to Holders for amounts due and unpaid on the Notes for principal (including payments pursuant to the required repurchase provisions of the Notes) and interest, ratably without preference or priority of any kind, according to the amounts due and payable on the Notes for principal (including payments pursuant to the required repurchase provisions of the Notes) and interest or in respect of any Conversion Obligation of the Company, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least fifteen calendar days before such record date, the Trustee shall transmit to each Holder and the Company a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs . In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Notes.

SECTION 6.12. Failure to Comply with Reporting Covenant . Notwithstanding anything to the contrary in the Indenture, the Company may elect that the sole remedy for an Event of Default relating to the Company's failure to comply with the covenant in Section 4.03(a), for the 365 days after the occurrence of such an Event of Default shall consist exclusively of the right to receive Additional Interest on the Notes at an annual rate equal to (i) 0.25% of the outstanding principal amount of the Notes from the first date of the occurrence of such Event of Default to, but not including, the 180 th day thereafter (or such earlier date on which the Event of Default relating to the Company's reporting obligations pursuant to Section 4.03(a) shall have been cured or waived) and (ii) 0.50% of the outstanding principal amount of the Notes from the 180 th date following the occurrence to the 365 th day after the first date of the occurrence of such Event of Default (or such earlier date on which the Event of Default relating to the Company's reporting obligations pursuant to Section 4.03(a) shall have been cured or waived). Additional Interest payable pursuant to this Section 6.12 shall be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest payable on the Notes. The Additional Interest payable pursuant to this Section 6.12 shall accrue on all outstanding Notes from and including the date on which an Event of Default relating to a failure to comply with the Company's reporting obligations pursuant to Section 4.03(a) first occurs to, but not including the 366th day thereafter (or such earlier date on which the Event of Default relating to the Company's reporting obligations pursuant to Section 4.03(a) shall have been cured or waived). On such 366th day (or earlier, if the Event of Default relating to the Company's reporting obligations pursuant to Section 4.03(a) is cured or waived prior to such 366th day), if such Event of Default is continuing, such Additional Interest payable pursuant to this Section 6.12 shall cease to accrue and the Notes shall be subject to acceleration as provided in Section 6.02. This Section 6.12 shall not affect the rights of Holders in the event of the occurrence of any other Event of Default.

In the event the Company does not elect to pay the Additional Interest pursuant to this Section 6.12 or the Company elected to make such payment but does not pay such Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02. In no event shall Additional Interest payable pursuant to the foregoing election accrue at a rate per year in excess of the applicable rate specified in this Section 6.12, regardless of the number of events or circumstances giving rise to requirements to pay such Additional Interest pursuant to this Section 6.12. The Company shall notify the Trustee in writing promptly

upon its becoming aware of its obligation to pay Additional Interest, the date on which such Additional Interest is payable and the amount identified as Additional Interest. In no event shall the Trustee be charged with knowledge of whether such Additional Interest is due, unless it has received the written notice referred to in the preceding sentence.

ARTICLE 7

[RESERVED]

ARTICLE 8

Discharge of Indenture

Article IV of the Base Indenture is hereby replaced in full, solely with respect to the Notes, with the following :

SECTION 8.01. Discharge of Liability on Notes . (a) The Indenture shall, subject to Section 8.01(b), cease to be of further effect with respect to the Notes if:

(1) the Company (i) delivers all outstanding Notes (other than Notes replaced pursuant to Section 3.6 of the Base Indenture) to the Trustee for cancellation or (ii) deposits with the Trustee or the Paying Agent after such Notes have become due and payable, whether at stated maturity, upon conversion, or on any Fundamental Change Repurchase Date, cash or, in the case of conversion, cash or cash and/or shares of Common Stock, if any, issuable upon conversion (and cash in lieu of fractional shares) (solely to satisfy outstanding conversions) calculated in accordance with the Indenture sufficient to satisfy all obligations due on all outstanding Notes and pays all other sums payable under the Indenture; and

(2) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided herein relating to the satisfaction and discharge of the Indenture have been complied with.

(b) Notwithstanding Section 8.01(a), the Company's obligations in Sections 2.04 and 2.05 and in this Article 8 shall survive until the Notes have been paid in full. Thereafter, the Company's obligations in Sections 8.03 and 8.04 shall survive.

SECTION 8.02. Application of Trust Money . The Trustee shall hold in trust money and any shares of Common Stock or other property due in respect of converted Notes deposited with it pursuant to this Article 8. It shall apply the deposited money through the Paying Agent and in accordance with the Indenture to the payment of principal of and interest on the Notes or, in the case of any shares of Common Stock or other property due in respect of converted Notes, in accordance with the Indenture in relation to the conversion of Notes pursuant to the terms hereof.

SECTION 8.03. Repayment to Company . Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest and any shares of Common Stock or other property due in respect of converted Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money and/or securities must look to the Company for payment as general creditors.

SECTION 8.04. Reinstatement . If the Trustee or Paying Agent is unable to apply any money or to deliver any shares of Common Stock or other property due in respect of converted Notes in accordance with this Article 8 by reason of any legal proceeding or 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 this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money and any shares of Common Stock or other property due in respect of converted Notes in accordance with this Article 8; *provided* , *however* , that, if the Company has made any payment of interest on or principal of any Notes because of 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 held by the Trustee or Paying Agent.

ARTICLE 9

Amendments

Article VIII of the Base Indenture is hereby replaced in full, solely with respect to the Notes, with the following :

SECTION 9.01. Without Consent of Holders . The Company and the Trustee may amend the Indenture or the Notes without notice to or consent of any Holder:

(a) to provide for conversion rights of Holders and the Company's repurchase obligations in connection with a Fundamental Change in the event of any reclassification of the Common Stock, merger or consolidation, or sale, conveyance, transfer, lease or other disposition of all or substantially all of the property and assets of the Company and its Subsidiaries taken as a whole;

(b) to secure the Notes;

(c) to provide for the assumption of the Company's obligations to the Holders in the event of a merger or consolidation, or sale, conveyance, transfer, lease or other disposition of all or substantially all of the property and assets of the Company and its Subsidiaries taken as a whole;

(d) to surrender any right or power conferred upon the Company;

(e) to add to the Company's covenants for the benefit of the Holders;

(f) enter into any supplemental indenture pursuant to Section 5.02;

(g) to cure any ambiguity or correct or supplement any inconsistent or otherwise defective provision or omission contained in the Indenture; *provided* that such modification or amendment does not, in the good faith determination of the Board of Directors, adversely affect the interests of the Holders in any material respect; *provided* , *further* , that any amendment, supplement or other modification made to conform the provisions of the Indenture to the description of the Notes contained in the Preliminary Prospectus Supplement as supplemented by the related pricing term sheet shall not be deemed to adversely affect the interests of the Holders;

(h) in connection with any share exchange event, provide that the Notes are convertible into Reference Property, subject to Section 10.02, and make certain related changes to the terms of the Notes to the extent expressly required by the Indenture (as determined in good faith by the Board of Directors);

(i) to increase the Conversion Rate;

(j) to comply with the requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

(k) to comply with the rules of any applicable securities depositary, including the Depositary;

(l) to permit or confirm for the issuance of Additional Notes in accordance with the Indenture;

(m) to add guarantees of obligations under the Notes;

(n) adding or modifying any other provision(s) or omission(s) which the Company may deem necessary or desirable and which will not adversely affect the interests of the Holders in any material respect, in the good faith determination of the Board of Directors; and

(o) to evidence or provide for a successor Trustee, including the appointment thereof.

After a modification or amendment under this Section becomes effective, the Company shall transmit to Holders a notice briefly describing such modification or amendment. However, the failure to give such notice to all Holders, or any defect in the notice, shall not impair or affect the validity of the modification or amendment under this Section.

SECTION 9.02. With Consent of Holders . The Company and the Trustee may modify or amend the Indenture or the Notes with the written consent or affirmative vote (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) of the Holders of a majority in aggregate principal amount of the Notes then outstanding, without notice to any other Holder. However, without the written consent or the affirmative vote (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) of each Holder of an outstanding Note affected by such change, an amendment may not:

(a) change the Maturity Date of any Note;

(b) reduce the rate or extend the time for payment of interest on any Notes;

(c) reduce the principal amount of any Notes;

(d) reduce any amount payable upon repurchase of any Notes upon a Fundamental Change;

(e) impair the right of any Holder to receive payment of principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest, if any, on, and the consideration due upon conversion of, its Notes on or after the respective due dates expressed or provided for in the Indenture or to institute suit for the enforcement of any such payment;

(f) change the currency in which any Notes is payable;

(g) change the Company's obligation to repurchase any Notes upon a Fundamental Change in a manner adverse to the Holders;

(h) make any change in Section 2.07;

(i) adversely affect the conversion right of a Holder to convert its Notes pursuant to the terms of the Indenture;

(j) make any change in Section 6.04 or the second sentence of this Section 9.02; or

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed modification or amendment. It is sufficient if such consent approves the substance of the proposed modification or amendment.

After a modification or amendment under this Section becomes effective, the Company shall transmit to Holders a notice briefly describing such modification or amendment. However, the failure to give such notice to all Holders, or any defect in the notice, shall not impair or affect the validity of the modification or amendment under this Section.

SECTION 9.03. Revocation and Effect of Consents and Waivers . A consent to an amendment or a waiver by a Holder shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. An amendment or waiver becomes effective once both (i) the requisite number of consents have been received by the Company or the Trustee and (ii) such amendment or waiver has been executed by the Company and the Trustee.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to the Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 calendar days after such record date.

SECTION 9.04. Notation on or Exchange of Notes . If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver the Note to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

SECTION 9.05. Trustee to Sign Amendments . The Trustee shall sign any amendment authorized pursuant to this Article 9 if the amendment 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 such amendment the Trustee shall be entitled to receive, and (subject to Sections 7.01 and 7.02) shall be fully protected in relying upon, in addition to the documents required by Section 1.2 of the Base Indenture, an Officer's Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by the Indenture and that such amendment is the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof.

ARTICLE 10

Conversion of Notes

SECTION 10.01. Right to Convert .

(a) Subject to and upon compliance with the provisions of this Article 10, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple in excess thereof) of such Note (i) subject to satisfaction of one or more of the conditions described in Section 10.01(b), at any time prior to the Close of Business on the Business Day immediately preceding July 15, 2024 and (ii) regardless of the conditions described in Section 10.01(b), on or after July 15, 2024 and prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at the Conversion Rate per $1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 10.02, the " **Conversion Obligation** ").

(b) (1) *Conversion Upon Satisfaction of Sale Price Condition* . Prior to the Close of Business on the Business Day immediately preceding July 15, 2024, a Holder shall have

the right to convert all or a portion of its Notes at any time during any calendar quarter (and only during such calendar quarter) beginning after March 31, 2018 if the Closing Sale Price for the Common Stock was more than 130% of the applicable Conversion Price on each applicable Trading Day for at least 20 Trading Days (whether or not consecutive) in the period of the 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter.

(2) *Conversion Upon Specified Corporate Transactions* . Prior to the Close of Business on the Business Day immediately preceding July 15, 2024, a Holder shall have the right to convert all or a portion of its Notes if the Company:

(i) distributes to all or substantially all holders of its Common Stock rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them to purchase, for a period of 45 calendar days or less from the announcement date for such distribution, shares of Common Stock at a price per share less than the average of the Closing Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution; or

(ii) distributes to all or substantially all holders of its Common Stock cash or other assets, debt securities or rights to purchase securities of the Company (other than pursuant to a stockholders rights plan), which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the announcement date for such distribution,

then, in each case, the Company shall notify all Holders, the Trustee and the Conversion Agent (if other than the Trustee) at least 45 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, a Holder may convert all or a portion of its Notes at any time until the earlier of the Close of Business on the Business Day immediately preceding the Ex-Dividend Date and the Company's announcement that such distribution shall not take place. A Holder may not convert any of its Notes based on this Section 10.01(b)(2) if as a result of holding its Notes such Holder shall otherwise participate in the distribution, without conversion as a result of holding the Notes, at the same time and on the same terms as holders of the Common Stock as if such Holder held a number of shares of Common Stock equal to the Conversion Rate on the Record Date of such distribution for each $1,000 principal amount of Notes held by such Holder (calculated on an aggregate basis per Holder).

(3) *Conversion Upon a Fundamental Change* . Prior to the Close of Business on the Business Day immediately preceding July 15, 2024, if a Fundamental Change occurs, or if the Company is a party to a consolidation, merger, binding share exchange, or sale, conveyance, transfer, lease or other disposition of all or substantially all of the Company and its subsidiaries' assets, taken as a whole, in each case, pursuant to which the Common Stock would be converted into Reference Property in a transaction described in Section 10.05, a Holder shall have the right to convert all or a portion of its Notes at any time beginning on the effective date of such transaction or event until the

earlier of (x) 35 Trading Days after the actual effective date of such transaction or event, or if such transaction or event also constitutes a Fundamental Change, until the related Fundamental Change Repurchase Date and (y) the second Scheduled Trading Day immediately preceding the Maturity Date. The Company shall notify all Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the effective date of any Fundamental Change no later than one Business Day after such effective date. If a Holder has submitted all or a portion of Notes for repurchase, unless such Holder has validly withdrawn such Notes in a timely fashion, such Holder's conversion rights with respect to the Notes so subject to repurchase shall expire at the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, unless the Company defaults in the payment of the Fundamental Change Repurchase Price. If a Holder has submitted any Notes for repurchase, such Notes may be converted only if such Holder submits a valid withdrawal notice, and, if the Notes submitted are evidenced by a Global Note, such Holder complies with appropriate Depositary procedures.

(4) *Conversion Upon Satisfaction of Trading Price Condition* . Prior to the Close of Business on the Business Day immediately preceding July 15, 2024, a Holder shall have a right to convert all or a portion of its Notes during the five Business Day period following 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 10.01(b)(4), for each Trading Day of such Measurement Period was less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on such Trading Day. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per $1,000 principal amount of Notes unless the Company has requested such determination; 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 determine the Trading Price) unless and until a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate and such Holder requests that the Company requests that the Bid Solicitation Agent determine or, if the Company is acting as Bid Solicitation Agent, requests that the Company determine, the Trading Price of the Notes. At such time, the Company shall instruct the Bid Solicitation Agent (if other than the Company) to determine or, if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price of the Notes for each Trading Day beginning on the next Trading Day and on each successive Trading Day until a Trading Day occurs on which the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Sale Price of the Common Stock and the applicable Conversion Rate on such Trading Day. At such time as the Company directs the Bid Solicitation Agent in writing to solicit bid quotations, the Company shall provide the Bid Solicitation Agent with the names and contact details of the three independent nationally recognized securities dealers the Company selects, and the Company shall direct those securities dealers to provide bids to the Bid Solicitation Agent. If the Trading Price condition 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 Trading Price condition has been met, the Trading Price per $1,000 principal amount of Notes is greater

than or equal to 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate for such date, the Company shall so promptly notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee).

SECTION 10.02. Conversion Procedures; Settlement Upon Conversion; No Adjustment for Interest or Dividends; Cash Payments in Lieu of Fractional Shares . (a) In order to exercise the conversion right with respect to any Notes in certificated form, a Holder must:

(i) complete and manually sign an irrevocable notice of conversion in the form entitled "Form of Conversion Notice" attached to the reverse of such certificated Note (or a facsimile thereof) (a " **Conversion Notice** ");

(ii) deliver such completed Conversion Notice and certificated Note to be converted to the Conversion Agent at the office of the Conversion Agent;

(iii) to the extent any shares of Common Stock issuable upon conversion are to be issued in a name other than the Holder's, furnish appropriate endorsements and transfer documents as may be required by the Conversion Agent;

(iv) if required pursuant to Section 10.02(d), pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled; and

(v) if required pursuant to Section 10.02(g), pay all transfer or similar taxes, if any.

In order to exercise the conversion right with respect to any interest in a Global Note, a Holder must:

(i) deliver to the Depositary the appropriate instruction form for conversion pursuant to the Depositary's conversion program;

(ii) to the extent any shares of Common Stock issuable upon conversion are to be issued in a name other than the Holder's, furnish appropriate endorsements and transfer documents as may be required by the Conversion Agent;

(iii) if required pursuant to Section 10.02(d), pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled; and

(iv) if required pursuant to Section 10.02(g), pay all transfer or similar taxes, if any.

The date that the Holder satisfies the foregoing requirements is the " **Conversion Date** ." The Notes shall be deemed to have been converted immediately prior to the Close of Business on the Conversion Date.

(b) Subject to this Section 10.02, upon conversion of any Note, the Company shall, at its election, pay or deliver, as the case may be, to the converting Holder, in full satisfaction of its Conversion Obligation, cash (" **Cash Settlement** "), shares of Common Stock

(“ **Physical Settlement** ”) or a combination of cash and shares of Common Stock (“ **Combination Settlement** ”), as set forth in this Section 10.02.

(i) All conversions occurring on or after July 15, 2024 shall be settled using the same Settlement Method and the same relative proportion of cash and/or shares of Common Stock as all other conversions occurring on or after July 15, 2024. If the Company elects a Settlement Method for conversions occurring on or after July 15, 2024, the Company shall deliver notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such Settlement Method the Company has selected no later than July 15, 2024. If the Company does not timely elect a Settlement Method for conversion occurring on or after July 15, 2024, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement with respect to that Conversion Date and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount per $1,000 principal amount of Notes shall be equal to $1,000. If the Company has timely elected Combination Settlement in respect of any such conversion, but fails to timely notify the Conversion Agent of the Specified Dollar Amount per $1,000 principal amount of Notes, such Specified Dollar Amount with respect to that Conversion Date shall be deemed to be $1,000.

(ii) With respect to conversions occurring prior to July 15, 2024, the Company shall use the same Settlement Method (including the same relative proportion of cash and/or shares of Common Stock) for all conversions occurring on the same Conversion Date. Except for any conversions that occur on or after July 15, 2024, the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates. Prior to July 15, 2024, if the Company elects a Settlement Method, the Company shall deliver notice to converting Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such Settlement Method the Company has selected no later than the Close of Business on the second Trading Day immediately following the relevant Conversion Date. If the Company does not timely elect a Settlement Method in respect of a particular Conversion Date, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement with respect to that Conversion Date and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount per $1,000 principal amount of Notes shall be equal to $1,000. If the Company has timely elected Combination Settlement in respect of any such conversion, but fails to timely notify the Conversion Agent of the Specified Dollar Amount per $1,000 principal amount of Notes, such Specified Dollar Amount with respect to that Conversion Date shall be deemed to be $1,000.

(iii) The cash, shares of Common Stock or combination of cash and shares of Common Stock payable or deliverable by the Company in respect of any conversion of Notes (the “ **Settlement Amount** ”) shall be computed by the Company as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver

to the converting Holder in respect of each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate on the Conversion Date (plus cash in lieu of any fractional share of Common Stock issuable upon conversion);

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 30 consecutive VWAP Trading Days during the relevant Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay and deliver, as the case may be, to the converting Holder in respect of each $1,000 principal amount of Notes being converted a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 30 consecutive VWAP Trading Days during the relevant Observation Period (plus cash in lieu of any fractional share of Common Stock issuable upon conversion).

If more than one Note shall be surrendered for conversion at any one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered.

(iv) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last VWAP Trading Day of the relevant Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and, if applicable, the amount of cash payable in lieu of any fractional share, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and, if applicable, the amount of cash payable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(v) Subject to the provisions of Section 10.03 and Section 10.05, the Company shall pay or deliver, as the case may be, the Settlement Amount due in respect of the Conversion Obligation as follows:

(A) if the Company elects Physical Settlement, (x) with respect to conversions occurring prior to the final Regular Record Date preceding the Maturity Date, the third Business Day immediately following the relevant Conversion Date and (y) with respect to conversions occurring on or after the final Regular Record Date preceding the Maturity Date, on the Maturity Date; or

(B) if the Company elects Cash Settlement or if the Company elects or is deemed to elect Combination Settlement, the third Business Day immediately following the last VWAP Trading Day of the relevant Observation Period.

(c) Each conversion will be deemed to have been effected as to any Notes surrendered for conversion on the applicable Conversion Date; *provided* , *however* , that the Person in whose name any shares of Common Stock shall be issuable upon such conversion shall be treated as the holder of record of such shares as of the Close of Business on the Conversion Date, in the case of Physical Settlement, or the last VWAP Trading Day of the relevant Observation Period, in the case of Combination Settlement.

(d) If a Holder converts any Notes after the Close of Business on the Regular Record Date for an interest payment but prior to the corresponding Interest Payment Date, such Holder shall receive on the earlier of the corresponding Interest Payment Date and the date the Company delivers the Settlement Amount in respect of such conversion, the interest accrued and unpaid on such Holder's Notes, notwithstanding such Holder's conversion of those Notes prior to the Interest Payment Date, in the event that such Holder was the Holder of record on the corresponding Regular Record Date. However, except as provided in the next sentence, at the time such Holder surrenders its Notes for conversion (whether or not such Holder was the Holder of record), such Holder must pay the Company an amount equal to the interest that has accrued and shall be paid on the Notes being converted on the corresponding Interest Payment Date. Such Holder is not required to make such payment:

(1) if such Holder converts its Notes after the Close of Business on January 1, 2025, which is the Regular Record Date immediately preceding the Maturity Date;

(2) if such Holder converts its Notes in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or

(3) to the extent of any overdue interest, if overdue interest exists at the time of conversion with respect to such Holder's Notes.

For the avoidance of doubt, all Holders on the Regular Record Date immediately preceding the Maturity Date and any Fundamental Change Repurchase Date shall receive and retain the full interest payment due on the Maturity Date or other applicable Interest Payment Date regardless of whether their Notes have been converted following such Regular Record Date.

If a Holder has already delivered a Fundamental Change Repurchase Notice pursuant to Section 3.01 with respect to a Note, such Holder may not surrender that Note for conversion until such Holder has validly withdrawn the Fundamental Change Repurchase Notice in accordance with Section 3.02, except as to a portion of such Note that is not subject to such Fundamental Change Repurchase Notice.

(e) In case any certificated Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the certificated Note so surrendered, without charge to such Holder, a new certificated Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered certificated Note.

(f) Upon the conversion of an interest in a Global Note, the Trustee and the Depositary shall reduce the principal amount of such Global Note in their records.

(g) The issue of stock certificates on conversions of Notes shall be made without charge to the converting holder of Notes for any taxes or duties in respect of the issue thereof. The Company shall not, however, be required to pay any such tax or duty which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Notes converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or duty or shall have established to the satisfaction of the Company that such tax has been paid.

(h) Except as provided in this Section 10.02, upon conversion, Holders shall not receive any separate cash payment of accrued and unpaid interest on the Notes. Accrued and unpaid interest to the Conversion Date shall be deemed to be paid in full with the cash paid and shares of Common Stock issued, if any, upon conversion rather than cancelled, extinguished or forfeited. With respect to Notes converted pursuant to Combination Settlement, accrued and unpaid interest shall be deemed to be paid first out of any cash paid upon such conversion.

(i) The Company shall not issue fractional shares of Common Stock upon conversion of the Notes. If any fractional shares of Common Stock would be issuable upon the conversion of any Note or Notes, the Company shall instead pay cash in lieu of fractional share of Common Stock issuable upon conversion in an amount based on (i) the Daily VWAP on the relevant Conversion Date if the Company elects Physical Settlement or (ii) the Daily VWAP on the last VWAP Trading Day of the relevant Observation Period if the Company elects or is deemed to elect Combination Settlement.

(j) Except as described under Section 10.04, the Company shall not make any payment or other adjustment for dividends on any Common Stock issued upon conversion of the Notes.

(k) The Trustee shall have no duty to monitor or notify the Holders as to whether any of the conditions to conversion have occurred.

SECTION 10.03. Adjustment to Conversion Rate Upon a Make-Whole Fundamental Change . If the Effective Date (as defined below) of a Fundamental Change (determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (2) of the definition thereof, a " **Make-Whole Fundamental Change** ") occurs prior to the Maturity Date of the Notes and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall

increase the Conversion Rate by an additional number of shares of Common Stock (the " **Additional Shares** ").

The number of Additional Shares shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change becomes effective (the " **Effective Date** ") and the Stock Price paid (or deemed paid) per share for the Common Stock in such Make-Whole Fundamental Change.

The Company shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change no later than one Business Day after such Effective Date.

A conversion of the Notes shall be deemed for these purposes to be "in connection with" a Make-Whole Fundamental Change if the Conversion Notice is received by the Conversion Agent on or after the Effective Date of the Make-Whole Fundamental Change but before the Close of Business on the second Business Day immediately preceding the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (2) of the definition thereof, the 35 th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change).

The number of Additional Shares set forth in the table below shall be adjusted in the same manner as and as of any date on which the Conversion Rate of the Notes is adjusted pursuant to this Article 10. The Stock Prices set forth in the first row of the table below (*i.e.* , the column headers) shall be simultaneously adjusted to equal the Stock Prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which shall be the Conversion Rate immediately prior to the adjustment and the denominator of which shall be the Conversion Rate as so adjusted.

The following table sets forth the number of Additional Shares per $1,000 principal amount of Notes by which the Conversion Rate shall be increased upon conversion in connection with a Make-Whole Fundamental Change:

	Stock Price												
Effective date	**$55.06**	**$60.00**	**$67.00**	**$75.43**	**$85.00**	**$100.00**	**$120.00**	**$140.00**	**$160.00**	**$180.00**	**$200.00**	**$250.00**	**$325.00**
January 17, 2018	4.9051	4.1763	3.3763	2.6660	2.0835	1.4688	0.9716	0.6716	0.4791	0.3496	0.2589	0.1254	0.0104
January 15, 2019	4.9051	4.1495	3.3207	2.5906	1.9978	1.3808	0.8918	0.6036	0.4226	0.3033	0.2214	0.1039	0.0089
January 15, 2020	4.9051	4.1235	3.2579	2.5027	1.8969	1.2776	0.7997	0.5264	0.3598	0.2528	0.1811	0.0816	0.0069
January 15, 2021	4.9051	4.0745	3.1643	2.3798	1.7612	1.1440	0.6853	0.4342	0.2873	0.1963	0.1372	0.0587	0.0049
January 15, 2022	4.9051	3.9833	3.0172	2.1989	1.5693	0.9648	0.5410	0.3244	0.2053	0.1354	0.0920	0.0370	0.0030
January 15, 2023	4.9051	3.8285	2.7825	1.9210	1.2865	0.7184	0.3613	0.1997	0.1196	0.0762	0.0505	0.0193	0.0014
January 15, 2024	4.9051	3.5832	2.3855	1.4513	0.8351	0.3767	0.1553	0.0776	0.0451	0.0288	0.0194	0.0074	0.0005
January 15, 2025	4.9051	3.4097	1.6685	0.0004	—	—	—	—	—	—	—	—	—

provided , *however* , that:

(1) if the exact Stock Price is between two Stock Prices listed in the table above under the column titled "Stock Price," or if the exact Effective Date of such Make-

Whole Fundamental Change is between two Effective Dates listed in the table above in the rows immediately below the title "Effective Date," then the number of Additional Shares by which the Conversion Rate shall be increased 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 Effective Dates based on a 360-day year; and

(2) (a) if the exact Stock Price is greater than $325.00 per share (subject to adjustment in the same manner and at the same time as the Stock Prices listed in the table above), then the Conversion Rate shall not be increased, or (b) if the exact Stock Price is less than $55.06 per share (subject to adjustment in the same manner and at the same time as the Stock Prices listed in the table above), then the Conversion Rate shall not be increased.

Notwithstanding the foregoing, in no event shall the total number of shares of Common Stock issuable upon conversion exceed 18.1620 shares per $1,000 principal amount of Notes, subject to adjustment in the same manner and at the same time as the Conversion Rate pursuant to this Article 10.

SECTION 10.04. Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders participate (other than in the case of a share split or a share combination), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 10.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the applicable Conversion Rate for each $1,000 principal amount of Notes held by such Holders (calculated on an aggregate basis per Holder):

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

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or the Effective Date of such share split or share combination, as the case may be;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution or the Effective Date of such share split or share combination, as the case may be;

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

distribution or the Effective Date of such share split or share combination, as the case may be; and

OS = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, share split or share combination, as the case may be.

Any adjustment made under this clause (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 clause (a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as 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 shall issue to all or substantially all holders of its Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them to purchase, for a period of 45 calendar days or less from the announcement date for such distribution, shares of Common Stock at a price per share that is less than the average of the Closing Sale Price of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such issuance, the Conversion Rate shall be increased based on the following formula:

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

where,

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

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

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

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 Closing Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such issuance.

Any increase made under this clause (b) shall 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 exercise 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 so exercised prior to their expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

In determining whether any rights, options or warrants entitle the holders of Common Stock to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such issuance, and in determining the aggregate offering price of such shares of 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 or conversion thereof and the value of such consideration (if other than cash, to be determined by the Board of Directors).

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

(i) dividends, distributions or issuances as to which an adjustment was effected pursuant to clause (a) or (b) above;

(ii) rights issued under a stockholders rights plan;

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

(iv) distributions of Reference Property in a transaction described in Section 10.05; and

(v) Spin-Offs described below in the second paragraph of this clause (c),

then the Conversion Rate shall be increased based on the following formula:

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

where,

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

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

SP_0 = the average of the Closing Sale Prices of the Common Stock over the ten 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 Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this clause (c) above shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution 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 distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of the Company's Capital Stock, evidences of the Company's indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company's Capital Stock or other securities that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

With respect to an adjustment pursuant to this clause (c) where there has been a payment of a dividend or other distribution on the Common Stock in shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit that are, or when issued shall be, listed or admitted for trading on a U.S. national securities exchange (a " **Spin-Off** ") the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

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

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

FMV = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading

Day period immediately following, and including, the Ex-Dividend Date of the Spin-Off (such period, the " **Valuation Period** "); and

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

Any adjustment to the Conversion Rate under the preceding paragraph of this clause (c) shall be made immediately after the Open of Business on the day after the last day of the Valuation Period, but shall be given effect as of the Open of Business on the Ex-Dividend Date for the Spin-Off. Notwithstanding anything to the contrary, (i) if the settlement date for a Note whose conversion is to be settled pursuant to Cash Settlement or Combination Settlement occurs on or before the last Trading Day in the Valuation Period for any Spin-Off and any VWAP Trading Day in the Observation Period for such conversion occurs on any Trading Day within such Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Valuation Period shall be deemed to be the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, the last VWAP Trading Day in such Observation Period (or, if such VWAP Trading Day is not a Trading Day, the immediately preceding Trading Day); and (ii) if the settlement date for a Note whose conversion is to be settled pursuant to Physical Settlement occurs on or before the last Trading Day in the Valuation Period for a Spin-Off and the Conversion Date for such conversion occurs on any Trading Day within such Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Valuation Period shall be deemed to be the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

For purposes of this Section 10.04(c) and subject in all respects to Section 10.08, rights, options or warrants distributed by the Company to all or substantially all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (each a " **Trigger Event** "):

(i) are deemed to be transferred with such Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of the Common Stock,

shall be deemed not to have been distributed for purposes of this Section 10.04(c) (and no adjustment to the Conversion Rate under this Section 10.04(c) shall 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 10.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of the Indenture, 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 record date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). 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 10.04(c) was made:

(1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase; and

(2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued.

(d) If the Company pays any cash dividends or distributions paid exclusively in cash to all or substantially all holders of its Common Stock (other than dividends or distributions made in connection with the Company's liquidation, dissolution or winding-up or upon a merger, consolidation or sale, lease, transfer, conveyance or other disposition resulting in a change in the conversion consideration as described under Section 10.05), the Conversion Rate shall be increased based on the following formula:

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

where,

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

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

SP_0 = the average of the Closing Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution (or, if the Company declares such dividend or distribution less than eleven Trading Days prior to such Ex-Dividend Date, ten shall be replaced with a smaller number of Trading Days that shall have occurred

after, and not including, such declaration date and prior to, but not including, such Ex-Dividend Date); and

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

Notwithstanding the foregoing, 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, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash 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 on the Ex-Dividend Date for such cash dividend or distribution. To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

Any increase made under this clause (d) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes 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 Closing 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 " **Expiration Date** "), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where,

CR = the Conversion Rate in effect immediately after the Close of Business on the Trading Day immediately following the Expiration Date;

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

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

SP = the average of the Closing Sale Prices of the Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date (the " **Averaging Period** ");

OS = the number of shares of Common Stock outstanding immediately after the Close of Business on the Expiration Date (after giving effect to such tender offer or exchange offer); and

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Expiration Date (prior to giving effect to such tender offer or exchange offer).

Any adjustment to the Conversion Rate under this clause (e) shall be made immediately prior to the Open of Business on the day following the last day of the Averaging Period, but shall be given effect as of the Open of Business on the Trading Day immediately following the Expiration Date. Notwithstanding anything to the contrary, (i) if the settlement date for a Note whose conversion is to be settled pursuant to Cash Settlement or Combination Settlement occurs on or before the last Trading Day in the Averaging Period for such tender or exchange offer and any VWAP Trading Day in the Observation Period for such conversion occurs on any Trading Day within such Averaging Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Averaging Period shall be deemed to be the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, the last VWAP Trading Day in such Observation Period (or, if such VWAP Trading Day is not a Trading Day, the immediately preceding Trading Day); and (ii) if the settlement date for a Note whose conversion is to be settled pursuant to Physical Settlement occurs on or before the last Trading Day in the Averaging Period for such tender or exchange offer and the Conversion Date for such conversion occurs on any Trading Day within such Averaging Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Averaging Period shall be deemed to be the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(f) Notwithstanding this Section 10.04, if a Conversion Rate adjustment described in subsections (a) through (e) of this Section 10.04 becomes effective on any Ex-Dividend Date, and a Holder has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date and would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 10.02 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 shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of such shares of Common Stock (which shall be calculated on an unadjusted basis) and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) Notwithstanding this Section 10.04, if a Holder converts a Note, Combination Settlement is applicable to such Note and the Daily Settlement Amount for any VWAP Trading Day during the Observation Period applicable to such Note (x) is calculated based on a Conversion Rate adjusted on account of any event described in clauses (a) through (e) of this Section 10.04 and (y) includes any shares of Common Stock that entitle their holder to participate in such event, then, notwithstanding the foregoing Conversion Rate adjustment

provisions in this Section 10.04, such Conversion Rate adjustment shall not be made for such converting Holder for such Trading Day. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) To the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Capital Market, the Company (i) may increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days if the Company determines that such increase would be in the Company's best interest and (ii) may (but is not required to) increase the Conversion Rate of the Notes 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.

(i) All calculations and other determinations under this Article 10 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment pursuant to this Section 10.04 shall be made to the Conversion Rate unless such adjustment would require a change of at least 1% in the then-effective Conversion Rate. However, any adjustments that are less than 1% of the Conversion Rate shall be carried forward and taken into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made with respect to the Notes (i) in connection with any subsequent adjustment to the Conversion Rate of at least 1% and (ii)(a) on each Trading Day of any Observation Period related to the conversion of the Notes (in the case of Cash Settlement or Combination Settlement) or (b) on the Conversion Date for any Notes (in the case of Physical Settlement). The deferral provisions described in this Section 10.04(i) is referred to as the " **1% Exception** ."

(j) Whenever the Conversion Rate is adjusted as herein provided, the Company shall as soon as reasonably practicable deliver to the Trustee and the 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. Failure to deliver such notice shall not affect the legality or validity of any such adjustment. 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 without inquiry that the last Conversion Rate of which it has knowledge is still in effect. As soon as reasonably practicable after delivery of such certificate, the Company shall transmit to Holders a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which such adjustment became effective. Failure to transmit such notice shall not affect the legality or validity of any such adjustment.

(k) Except as stated in Section 10.03, this Section 10.04 and Section 10.08, the Company shall not adjust the Conversion Rate for any transaction or event. Without limiting the foregoing, the Conversion Rate shall not be adjusted:

(1) except as described in this Section 10.04, upon the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(3) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(4) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (3) above and outstanding as of the date the Notes were first issued;

(5) for the repurchase of any shares of Common Stock that is not a tender offer or exchange offer of the nature described in Section 10.04(e), including, but not limited to, pursuant to an open-market share repurchase program, a structured or derivative transaction or other buyback transaction;

(6) solely for a change in the par value of the Common Stock; or

(7) for accrued and unpaid interest, if any.

(l) For purposes of this Section 10.04, the number of shares of Common Stock at any time outstanding shall not include shares 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. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(m) Whenever any provision of this Article 10 requires the Company to calculate the Closing Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over, or based on, a span of multiple days (including an Observation Period and the "Stock Price" for purposes of a Make-Whole Fundamental Change), the Company shall 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 Ex-Dividend Date of the event occurs, at any time during the period when the Closing Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated. For the avoidance of doubt, the adjustments made pursuant to this Section 10.04(m) shall be made solely to the extent the Company determines in its good faith judgment that any such adjustment is necessary, without duplication of any adjustment made pursuant to this Section 10.04.

SECTION 10.05. Effect of Reclassifications, Business Combinations, Asset Sales and Corporate Events . If the Company:

(a) reclassifies or changes its Common Stock (other than changes in par value or from no par value resulting from a subdivision or combination); or

(b) consolidates or merges with or into or enters into a binding share exchange with any Person or sells, leases, transfers, conveys or otherwise disposes of all or substantially all of the property and assets of the Company and its Subsidiaries taken as a whole to another Person,

and, in either case, holders of Common Stock receive stock, other securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for their Common Stock, then from and after the effective date of such transaction (a " **Merger Event** "), the right to convert each outstanding $1,000 principal amount of Notes based on the Common Stock shall, without the consent of any Holders, be changed into a right to convert each such Note based on the kind and amount of stock, other securities or other property or assets (including cash or any combination thereof) (the " **Reference Property** ") that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to the Merger Event would have been entitled to receive. The Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee, without the consent of the Holders, a supplemental indenture providing that, at and after the Merger Event, the right to convert each outstanding $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of Reference Property that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have been entitled to receive upon such transaction. If the Merger Event causes the Common Stock to be converted into or exchanged for the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which the Notes shall become convertible shall be deemed to be based on the weighted average of the kind and amount of consideration actually received by holders of a majority of the Common Stock that voted for such an election (if electing between two types of consideration) or holders of a plurality of the Common Stock that voted for such an election (if electing between more than two types of consideration), as the case may be, and if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock. In all cases the provisions under Section 10.02 shall continue to apply with respect to the calculation of the consideration due upon conversion, with the Daily Conversion Value, Daily Settlement Amount and the Daily VWAPs determined based on a unit of Reference Property that a holder of one share of the Common Stock would have received in such transaction; *provided* , *however* , that if the holders of the Common Stock receive only cash in such Merger Event, the consideration due upon conversion shall equal the Conversion Rate in effect on the Conversion Date, multiplied by the price paid per share of Common Stock in such transaction, and settlement of any conversion thereafter shall occur on the third Business Day following the applicable Conversion Date. The Company hereby agrees not to become a party to any such transaction unless its terms are consistent with the foregoing. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as practicable to the adjustments provided for in this Article 10.

When the Company executes a supplemental indenture pursuant to this Section 10.05, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of Reference Property after any such Merger Event, any adjustment to the Conversion Rate to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental

indenture to be transmitted to each Holder, within 20 days after execution thereof. Failure to deliver any such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 10.05 shall similarly apply to successive reclassifications, changes, consolidations, mergers, binding share exchanges, sales, conveyances, transfers, leases or other dispositions.

(c) If this Section 10.05 applies to any event or occurrence, Section 10.04 shall not apply.

SECTION 10.06. Certain Covenants. (a) The Company shall, prior to the issuance of any Notes hereunder, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock or shares of Common Stock held in treasury, a sufficient number of shares of Common Stock, free of preemptive rights, to permit the conversion of the Notes.

(b) The Company covenants that all shares of Common Stock issued upon conversion of Notes shall be duly and validly issued and fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(c) The Company shall endeavor promptly to comply with all federal and state securities laws regulating the issuance and delivery of shares of Common Stock upon the conversion of Notes, if any, and shall cause to have listed or quoted and shall keep listed or quoted all such shares of Common Stock on the Relevant Stock Exchange.

SECTION 10.07. [Reserved].

SECTION 10.08. Stockholder Rights Plans. To the extent that any stockholders' rights plan adopted by the Company is in effect upon conversion of the Notes, the Holders shall receive, in addition to any Common Stock due upon conversion, the rights under the applicable rights agreement. However, if, prior to any conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all or substantially all Holders of the Common Stock, shares of the Company's Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants as described above in Section 10.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights. For the avoidance of doubt, any issuance of stockholder rights (including pursuant to a stockholder rights plan adopted after the date of initial issuance of the Notes) will not cause an adjustment of the Conversion Rate unless and until such stockholder rights have separated from the Common Stock.

SECTION 10.09. Responsibility of Trustee. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to 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 securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other 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 Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 10. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 10.05 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 10.05 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 9.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 10.01 has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 10.01 with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 10.01.

ARTICLE 11

Miscellaneous

SECTION 11.01. Notices . Notices to the Conversion Agent or Bid Solicitation Agent are deemed given only upon actual receipt by the Conversion Agent or Bid Solicitation Agent, as applicable.

SECTION 11.02. No Optional Redemption . The Notes shall not be redeemable by the Company prior to the Maturity Date, and no sinking fund is provided for the Notes. Article X and XI of the Base Indenture shall not apply to the Notes.

SECTION 11.03. When Notes Disregarded . In determining whether the Holders of the required principal amount of Notes have concurred in any direction, modification, amendment waiver or consent of the terms of the Indenture, Notes owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded (from both the numerator and denominator) and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 11.04. Withholding Taxes . Notwithstanding any other provision of the Indenture, if the Company or other applicable withholding agent determines, in its good faith discretion, that it is required by applicable law to pay, and pays, withholding taxes or backup withholding on behalf of the Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, set off such payments against payments of cash and shares of Common Stock on the Note (or any payments on the Company's Common Stock) or sales proceeds received by or other funds or assets of the Holder or beneficial owner.

SECTION 11.05. GOVERNING LAW . THIS FIRST SUPPLEMENTAL INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE INDENTURE OR THE NOTES, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 11.06. Counterparts . This First Supplemental Indenture may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The exchange of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto.

SECTION 11.07. Table of Contents; Headings . The table of contents, cross-reference sheet and headings of the Articles and Sections of this First Supplemental Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 11.08. Calculations . The Company shall be responsible for making all calculations called for under the Notes and for monitoring any Stock Price, Measurement Period or Observation Period. The calculations include, but are not limited to, determinations of the Closing Sale Price of the Common Stock, the VWAP of the Common Stock, accrued interest payable on the Notes, any Additional Interest due on the Notes, the Conversion Rate, the Conversion Price, the Daily Conversion Values and the Additional Shares. The Company or its agents shall make all these calculations in good faith and, absent manifest error, such calculations shall be final and binding on Holders. The Company shall provide a schedule of these calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification. The Trustee shall forward these calculations to any Holder upon the request of such Holder.

SECTION 11.09. Legal Holidays . *Section 1.13 of the Base Indenture is hereby replaced in full, solely with respect to the Notes, with the following* : If any Interest Payment Date, the Maturity Date or any earlier required Fundamental Change Repurchase Date of a note falls on a day that is not a Business Day (which for these purposes, "Business Day" shall not include days in which the office where the Place of Payment is authorized or required by law to be closed), 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.

[*Remainder of page left blank intentionally* .]

IN WITNESS WHEREOF, the parties have caused this First Supplemental Indenture to be duly executed as of the date first written above.

EXACT SCIENCES CORPORATION
as Issuer

By: /s/ Jeffrey T. Elliott
Name: Jeffrey T. Elliott
Title: Chief Financial Officer

[*Signature Page to First Supplemental Indenture*]

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: /s/ Allison Lancaster-Poole
Name: Allison Lancaster-Poole
Title: Vice President

[*Signature Page to First Supplemental Indenture*]

EXHIBIT A

[FORM OF FACE OF NOTE]

[Global Note Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO EXACT SCIENCES CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

No.

1.0% Convertible Senior Note due 2025

CUSIP No.: [30063P AA3]

ISIN No.: [US30063PAA30]

EXACT SCIENCES CORPORATION, a corporation duly organized and validly existing under the laws of the State of Delaware (the " **Company,"** which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to CEDE & CO., or registered assigns, the principal amount [*Insert if a Global Note* : as set forth in the "Schedule of Exchanges of Notes" attached hereto][*Insert if a certificated Note* of $[ ]], on January 15, 2025 and interest thereon as set forth below.

This Note shall bear interest at the rate of 1.0% per year from January 17, 2018 or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until January 15, 2025, unless earlier converted or repurchased. Accrued interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for a partial month, on the basis of the number of days actually elapsed in a 30-day month. Interest is payable semi-annually in arrears on each January 15 and July 15, commencing on July 15, 2018, to Holders of record at the Close of Business on the preceding January 1 and July 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.12 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to such Section 6.12 and any express mention of the payment of Additional Interest in any provision therein and herein shall not be construed as excluding Additional Interest in those provisions thereof and hereof where such express mention is not made.

Any Defaulted Interest shall accrue interest per annum at the rate borne by the Notes from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Interest shall have been paid by the Company, at its election in accordance with Section 2.06 of the Indenture.

The Company shall pay the principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) upon presentation thereof at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and the Corporate Trust Office as a place where Notes may be presented for payment or for registration of transfer.

Reference is made to the further provisions of this Note set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

EXACT SCIENCES CORPORATION

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF NOTE]

1.0% Convertible Senior Note due 2025

This Note is one of a duly authorized issue of Notes of the Company, designated as its 1.0% Convertible Senior Notes due 2025 (the " **Notes** ") all issued under and pursuant to an Indenture dated as of January 17, 2018, between the Company and U.S. Bank National Association, as trustee (the " **Trustee** ") the " **Base Indenture** "), as supplemented by the First Supplemental Indenture dated as of January 17, 2018, between the Company and the Trustee (the " **First Supplemental Indenture** ", and together with the Base Indenture, the " **Indenture** "), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Conversion Agent, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. The Notes represent that aggregate principal amount of outstanding Notes from time to time endorsed hereon and the aggregate principal amount of outstanding Notes represented hereby may from time to time be increased or reduced to reflect purchases, cancellations, conversions or transfers permitted by the Indenture. In the event of any inconsistency between this Note and the terms of the Indenture, the terms of the Indenture shall govern.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the 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. Upon conversion of any Note, the Company shall, at its election, pay or deliver, as the case may be, cash, shares of Common Stock or a combination of cash and shares of Common Stock.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

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 the principal (including the Fundamental Change Repurchase Price, if applicable) of or the consideration due upon conversion of, as the case may be, and accrued and unpaid interest on this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

SCHEDULE OF EXCHANGES OF NOTES (1)

Exact Sciences Corporation
1.0% Convertible Senior Notes due 2025

The initial principal amount of this Global Note is [ ] DOLLARS ($[ ]). The following increases or decreases in this Global Note have been made:

Date	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

(1) To be inserted for Global Notes.

CONVERSION NOTICE

TO: EXACT SCIENCES CORPORATION
U.S. BANK NATIONAL ASSOCIATION, as Trustee

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is $1,000 or a multiple thereof) below designated in accordance with the terms of the Indenture referred to in this Note, and directs that the cash and shares of Common Stock, if any, deliverable upon such conversion and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned shall provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated:

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

Fill in the registration of shares of Common Stock, if any, if to be issued, and Notes if to be delivered, and the person to whom cash and payment for fractional shares is to be made, if to be made, other than to and in the name of the registered holder:

Please print name and address

_____
(Name)

_____
(Street Address)

_____
(City, State and Zip Code)

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

$

Social Security or Other Taxpayer
Identification Number:

NOTICE: The signature on this Conversion Notice must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

TO: EXACT SCIENCES CORPORATION
U.S. BANK NATIONAL ASSOCIATION, as Trustee

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from Exact Sciences Corporation (the "Company") regarding the right of holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof, together with accrued and unpaid interest to, but excluding, the Fundamental Change Repurchase Date to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Fundamental Change Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature(s): _____

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____
Signature Guarantee

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

Notes Certificate Number (if applicable):

Principal amount to be repurchased (if less than all, must be $1,000 or whole multiples of $1,000 in excess thereof):

Social Security or Other Taxpayer Identification Number:

Exhibit 5.1

January 17, 2018

Exact Sciences Corporation
441 Charmany Drive
Madison, Wisconsin 53711

Ladies and Gentlemen:

We have acted as counsel to Exact Sciences Corporation, a Delaware corporation (the " Company "), in connection with the issuance and sale by the Company of an aggregate of $690,000,000 principal amount of the Company's 1.0% Senior Convertible Notes due January 2025 (the " Notes ") initially convertible into 9,147,261 shares (the " Conversion Shares ") of the Company's common stock, $0.01 par value per share (the " Common Stock "), pursuant to the Underwriting Agreement dated January 11, 2018 (the " Underwriting Agreement ") by and between the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein. In accordance with the Securities Act of 1933, as amended (the " Securities Act "), and the rules and regulations promulgated thereunder, the Company has prepared and filed with the Securities and Exchange Commission (the " SEC ") (i) a Registration Statement on Form S-3 (Registration No. 333-218535) (the " Registration Statement "), which became effective June 6, 2017, (ii) a preliminary prospectus supplement dated January 11, 2018 (the " Preliminary Prospectus Supplement ") and (iii) a final prospectus supplement dated January 11, 2018 (the " Final Prospectus Supplement ").

You have requested our opinion as to the matters set forth below in connection with the issuance of the Shares. For purposes of rendering that opinion, we have examined (i) the Registration Statement, (ii) the prospectus dated June 6, 2017 included in the Registration Statement, as supplemented by the Final Prospectus Supplement, (iii) the Underwriting Agreement, (iv) an indenture, dated January 17, 2018, by and between the Company and U.S. Bank National Association, as trustee (the " Trustee "), as supplemented by the first supplemental indenture, dated January 17, 2018, by and between the Company and the Trustee, establishing the terms of the Notes (as supplemented, the " Indenture "), (v) the form of Note included in the Indenture, (vi) the Company's Sixth Amended and Restated Certificate of Incorporation, as amended, (vii) the Company's Third Amended and Restated By-laws, (viii) the Company's stock ledger and (ix) the corporate action of the Company's Board of Directors which provides for the issuance of the Notes. We have made such other investigation as we have deemed appropriate. We have examined and relied upon certificates of public officials and such other documents and instruments as we have

deemed necessary or advisable for the purpose of rendering our opinion. For the purposes of this opinion letter, we have made assumptions that are customary in opinion letters of this kind, including the assumptions that each document submitted to us is accurate and complete, that each such document that is an original is authentic, that each such document that is a copy conforms to an authentic original, and that all signatures on each such document are genuine. We have further assumed the legal capacity of natural persons. We have not verified any of those assumptions. We express no opinion to the extent that, notwithstanding the Company's current reservation of shares of Common Stock, future issuances of securities of the Company and/or adjustments to outstanding securities of the Company cause the Notes to be convertible into more shares of Common Stock than the number that then remain authorized but unissued.

Our opinion set forth below is limited to the Delaware General Corporation Law (the " DGCL ") and, as to the Notes constituting valid and legally binding obligations of the Company, the laws of the State of New York.

Based upon and subject to the foregoing, it is our opinion that:

1. The Notes have been duly authorized for issuance by the Company and, upon the due execution and delivery of the Indenture by each of the Company and the Trustee and the execution, authentication and issuance of the Notes (in the form examined by us) against payment therefor in accordance with the terms of the Underwriting Agreement and otherwise in accordance with the Indenture, the Notes will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

2. The issuance of the Conversion Shares has been duly authorized and when issued, delivered and paid for upon conversion of the Notes in accordance with the Indenture and the Notes, will be validly issued, fully paid and nonassessable.

The opinions expressed in numbered opinion paragraph 1 above are subject to and limited by (i) the effect of bankruptcy, insolvency, fraudulent conveyance, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or secured parties generally, (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or another equitable remedy, and (iii) concepts of materiality, reasonableness, good faith and fair dealing.

We express no opinion with respect to any provision of the Notes that purports to: (a) waive equitable rights, remedies, or defenses; (b) authorize a party to act in its sole discretion or provide that determination by a party is conclusive; (c) require notices, waivers, amendments, modifications or supplements to be made only in writing; (d) effect waivers of statutory or equitable rights or the effect of applicable laws; (e) waive or modify any party's diligence obligations; (f) impose liquidated damages; (g) relieve any party of the consequences of its own unlawful, willful or negligent acts or omissions; (h) grant indemnity or a right of contribution; (i) create rights of setoff or subrogation; (j) impose an increased interest rate, interest on interest,

late charge, or any additional obligation or burden upon the occurrence of a default of any obligation thereunder; (k) limit or preclude the liability of any party for consequential, special, punitive or indirect damages; (l) permit the declaration of a default for an immaterial breach of provisions thereof; (m) waive the right to trial by jury; (n) designate the jurisdiction, forum, venue or choice of law for resolution of any cause of action or dispute or the method of service of process; (o) require enforcement of one or more provisions thereof notwithstanding that one or more other provisions thereof may be unenforceable; (p) provide that enumerated remedies are not exclusive or that a party has the right to pursue multiple remedies without regard to other remedies elected or that all remedies are cumulative; (q) establish evidentiary standards by which it is to be construed; (r) permit the exercise, under certain circumstances, of rights without notice or without providing opportunity to cure failures to perform; (s) bind persons that are not party thereto; or (t) grant a power of attorney or proxy.

We hereby consent to the filing of this opinion letter with the SEC as Exhibit 5 to the Company's Current Report on Form 8-K dated January 17, 2018 and its incorporation by reference in the Registration Statement. We also consent to the reference to our Firm in the Preliminary Prospectus Supplement and the Final Prospectus Supplement under the caption "Legal Matters." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ K&L Gates LLP

Exhibit 99.1

Exact Sciences Announces Upsize and Pricing of $600 Million of 1.0% Convertible Senior Notes Due 2025

MADISON, Wis. January 11, 2018— Exact Sciences Corporation (NASDAQ: EXAS) announced today that it has priced its underwritten public offering of 1.0% convertible senior notes due 2025 (the "Notes"), and upsized the offering from $500 million to $600 million aggregate principal amount, pursuant to an effective shelf registration statement filed with the Securities and Exchange Commission (the "SEC") on Form S-3. The Company has also granted the underwriter a 30-day option to purchase up to an additional $90 million aggregate principal amount of Notes. The closing of the offering is expected to occur on January 17, 2018 and is subject to customary closing conditions. The Company intends to use the net proceeds of this offering for general corporate and working capital purposes.

The Notes will be senior, unsecured obligations of the Company and will bear interest at a rate of 1.0% per annum. Interest on the Notes will be payable semi-annually in arrears on January 15 and July 15 of each year, beginning July 15, 2018. The Notes will be convertible into cash, shares of the Company's common stock (plus, if applicable, cash in lieu of any fractional share), or a combination thereof, at the Company's election. The initial conversion rate will be 13.2569 shares of the Company's common stock per $1,000 principal amount of Notes, which is equivalent to an initial conversion price of approximately $75.43 per share. The Notes will mature on January 15, 2025, unless earlier converted or repurchased in accordance with their terms prior to such date, and may not be redeemed by the Company prior to maturity. Prior to July 15, 2024, the Notes will be convertible only upon the occurrence of certain events and during certain periods, and thereafter, until the close of business on the second scheduled trading day immediately preceding the maturity date.

BofA Merrill Lynch is acting as the sole book-running manager for the offering. An automatically effective shelf registration statement relating to these securities was filed with the SEC on June 6, 2017. A copy of the prospectus supplement and prospectus relating to the offering may be obtained free of charge on the SEC's website at http://www.sec.gov or by sending a request to BofA Merrill Lynch, NC1-004-03-43, 200 North College Street, 3rd Floor, Charlotte, NC 28255-0001, Attention: Prospectus Department (or by e-mail at dg.prospectus_requests@baml.com).

This press release shall not constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such state. The offering of these securities will be made only by means of the prospectus supplement and prospectus relating to the offering.

About Exact Sciences Corp.

Exact Sciences Corp. is a molecular diagnostics company focused on the early detection and prevention of the deadliest forms of cancer. The company has exclusive intellectual property protecting its non-invasive, molecular screening technology for the detection of colorectal cancer.

Certain statements made in this news release contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended, that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe the Company's future

plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as “believe,” “expect,” “may,” “will,” “should,” “could,” “seek,” “intend,” “plan,” “estimate,” “anticipate,” or other comparable terms. Forward-looking statements in this news release may address the following subjects among others: the terms and size of the offering and the use of proceeds from the offering. Forward-looking statements involve inherent risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements as a result of various factors including those risks and uncertainties described in the Risk Factors and in Management’s Discussion and Analysis of Financial Condition and Results of Operations sections of the Company’s most recently filed Annual Report on Form 10-K and the Company’s subsequently filed Quarterly Reports on Form 10-Q, as well as those described in the Risk Factors section of the Supplemental Regulation FD Disclosure furnished as Exhibit 99.1 to the Company’s Current Report on Form 8-K filed with the SEC on January 11, 2018. The Company urges you to consider those risks and uncertainties in evaluating the Company’s forward-looking statements. The Company cautions readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. Except as otherwise required by the federal securities laws, the Company disclaims any obligation or undertaking to publicly release any updates or revisions to any forward-looking statement contained herein (or elsewhere) to reflect any change in the Company’s expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

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Source: Exact Sciences Corporation