
**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): **May 14, 2025**

CALIFORNIA WATER SERVICE GROUP
(Exact name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation)

1-13883
(Commission file number)

77-0448994
(I.R.S. Employer
Identification Number)

1720 North First Street
San Jose, California
(Address of principal executive offices)

95112
(Zip Code)

(408) 367-8200
(Registrant's telephone number, including area code)

N/A
(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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares, par value \$0.01	CWT	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined by 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. ☐

Item 1.01 Entry into a Material Definitive Agreement.

On May 14, 2025, California Water Service Group (the “**Company**”) entered into an equity distribution agreement (the “**Equity Distribution Agreement**”) with Robert W. Baird & Co. Incorporated, BofA Securities, Inc., Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Janney Montgomery Scott LLC, RBC Capital Markets, LLC, Blaylock Van and Samuel A. Ramirez & Company, Inc., each as sales agent and/or as Forward Seller (as defined below) (collectively, the “**Managers**”) and each of Robert W. Baird & Co. Incorporated, Bank of America, N.A., Morgan Stanley & Co. LLC, Wells Fargo Bank, National Association and Royal Bank of Canada, each as forward purchaser (collectively, the “**Forward Purchasers**”). Managers, when acting as sales agent for a Forward Purchaser, are referred to collectively as “**Forward Sellers**.” Pursuant to the terms of the Equity Distribution Agreement, the Company may, from time to time through an at-the-market equity program, sell shares of the Company’s common stock, par value \$0.01 per share (the “**common stock**”), having an aggregate gross sales price of up to \$350.0 million (the “**Shares**”) through the Managers, acting as the Company’s agents (the “**ATM Offering**”). In the Equity Distribution Agreement, the Company agrees to indemnify the Managers against certain liabilities, including liabilities under the Securities Act of 1933, as amended or to contribute payments that the Managers may be required to make because of such liabilities. The Company or the Managers may suspend the offering of Shares at any time and from time to time by notifying the other party.

Sales of shares of the common stock, if any, as contemplated by the Equity Distribution Agreement made through the Managers, as the Company’s sales agents, or as Forward Sellers, will be made by means of ordinary brokers’ transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, by privately negotiated transactions (including block sales) or by any other methods permitted by applicable law.

The Equity Distribution Agreement contemplates that, in addition to the issuance and sale by the Company of shares of common stock to or through the Managers, the Company may enter into separate forward sale agreements with the Forward Purchasers. If the Company enters into a forward sale agreement with any Forward Purchaser, the Company expects that such Forward Purchaser or its affiliate will attempt to borrow from third parties and sell, through the relevant Manager, acting as sales agent for such Forward Purchaser, shares of common stock to hedge such Forward Purchaser’s exposure under such forward sale agreement. The Company will not receive any proceeds from any sale of shares of its common stock borrowed by a Forward Purchaser or its affiliate and sold through the applicable Manager, as Forward Seller.

The Company currently expects to fully physically settle each forward sale agreement, if any, with the relevant Forward Purchaser on one or more dates specified by the Company on or prior to the maturity date of such forward sale agreement, in which case the Company expects to receive aggregate net cash proceeds at settlement equal to the number of shares specified in such forward sale agreement multiplied by the relevant forward price per share at such time. However, subject to certain exceptions and conditions, the Company may also elect, in its sole discretion, to cash settle or net share settle all or any portion of its obligations under any forward sale agreement, in which case the Company may not receive any proceeds (in the case of cash settlement) or will not receive any proceeds (in the case of net share settlement), and the Company may owe cash (in the case of cash settlement) or shares of its common stock (in the case of net share settlement) to the relevant Forward Purchaser.

None of the Managers, whether acting as the Company’s sales agent or, if applicable, as a Forward Seller, is required to sell any specific number or dollar amount of shares of common stock, but each has agreed, subject to the terms and conditions of the Equity Distribution Agreement, to use its commercially reasonable efforts, consistent with its normal trading and sales practices and applicable law and regulations, to sell shares of common stock on the terms agreed upon by such Manager, the Company and, in the case of shares offered through such Manager as Forward Seller, the relevant Forward Purchaser from time to time. The Equity Distribution Agreement provides that the shares of common stock offered and sold through the Managers, as the Company’s sales agents or as Forward Sellers, pursuant to the Equity Distribution Agreement will be offered and sold through only one Manager at any given time.

The Company will pay the applicable Manager a commission at a rate equal to 1.0% of the gross sales price of the shares of common stock sold through such Manager, as the Company’s sales agent. In connection with each forward sale agreement, the Company will pay the applicable Manager, as Forward Seller, a commission, in the form of a reduction to the initial forward price under the related forward sale agreement, at a rate equal to 1.0% of the gross sales price of the borrowed shares of common stock sold through such Manager, as Forward Seller, during the applicable forward selling period for such shares (subject to certain possible adjustments to such gross sales price for daily accruals and any dividends having an “ex-dividend” date during such forward selling period).

Under the terms of the Equity Distribution Agreement, the Company may also sell shares of its common stock to one or more of the Managers as principal, at a price per share to be agreed upon at the time of sale. If the Company sells shares to one or more of the Managers as principal, the Company will enter into a separate written agreement with such Manager or Managers, as the case may be, and the Company will describe the terms of the offering of those shares in a separate prospectus supplement.

The Company intends to use the net cash proceeds it receives from the issuance and sale by the Company of any shares of common stock to or through the Managers and any net cash proceeds the Company receives upon settlement of any forward sale agreement with the relevant Forward Purchasers, after deducting commissions on such sales and offering expenses, for general corporate purposes, which may include, without limitation, working capital, construction and acquisition expenditures, investments and repurchases, and redemptions of securities.

The Managers and their affiliates have, from time to time, provided, and may in the future provide, various investment banking, commercial banking and/or other financial services for the Company and the Company's affiliates in the ordinary course of business, for which services they have and may in the future receive customary fees. Affiliates of certain of the Managers are lenders under certain of the Company and the Company's affiliates' credit facilities.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

The Shares will be issued pursuant to the Company's automatically effective shelf registration statement on Form S-3 that is currently on file (Registration No. 333-287273), the base prospectus contained therein, and a prospectus supplement that was filed with the Securities and Exchange Commission on May 14, 2025.

A copy of the Equity Distribution Agreement and form of Master Forward Confirmation are attached as Exhibit 1.1 and Exhibit 1.2, respectively, to this current report. The foregoing description of the Equity Distribution Agreement and Master Forward Confirmation does not purport to be complete and is qualified in its entirety by reference to Exhibit 1.1 and Exhibit 1.2.

A copy of the opinion of Gibson, Dunn & Crutcher LLP relating to the validity of the securities issued in the ATM Offering is filed as Exhibit 5.1 to this current report.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

EXHIBIT INDEX

Exhibit No.	Description
<u>1.1</u>	<u>Equity Distribution Agreement, dated as of May 14, 2025, between California Water Service Group and Robert W. Baird & Co. Incorporated, BofA Securities, Inc, Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Janney Montgomery Scott LLC, RBC Capital Markets, LLC, Blaylock Van, LLC and Samuel A. Ramirez & Company, Inc.</u>
<u>1.2</u>	<u>Form of Master Forward Confirmation</u>
<u>5.1</u>	<u>Opinion of Gibson, Dunn & Crutcher LLP</u>
<u>23.1</u>	<u>Consent of Gibson, Dunn & Crutcher LLP (contained in Exhibit 5.1)</u>
104	Cover Page Interactive Data File, formatted in Inline XBRL and included as Exhibit 101.

SIGNATURE

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.

CALIFORNIA WATER SERVICE GROUP

Date: May 14, 2025

By: /s/ James P. Lynch

Name: James P. Lynch

Title: Senior Vice President, Chief Financial Officer & Treasurer

CALIFORNIA WATER SERVICE GROUP
COMMON STOCK, PAR VALUE \$0.01 PER SHARE
EQUITY DISTRIBUTION AGREEMENT

May 14, 2025

May 14, 2025

To: Robert W. Baird & Co. Incorporated
777 E. Wisconsin Avenue
Milwaukee, WI 53202

BofA Securities, Inc.
One Bryant Park
New York, NY 10036

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

Wells Fargo Securities, LLC
30 Hudson Yards, 14th Floor
New York, NY 10001

Janney Montgomery Scott LLC
1717 Arch Street,
Philadelphia, PA 19103

RBC Capital Markets, LLC
200 Vesey Street
New York, NY 10281

Blaylock Van, LLC
600 Lexington Avenue, 3rd Floor
New York, NY 10022

Samuel A. Ramirez & Company, Inc.
14 East 52nd Street, 5th Floor
New York, NY 10022

As Managers, and if applicable, as Forward Sellers

Robert W. Baird & Co. Incorporated
777 E. Wisconsin Avenue
Milwaukee, WI 53202

Bank of America, N.A.
One Bryant Park, 8th Fl.
New York, NY 10036

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

Wells Fargo Bank, National Association
500 West 33rd Street
New York, NY 10001

Royal Bank of Canada
Brookfield Place
200 Vesey Street, 8th Floor
New York, New York 10281

As Forward Purchasers

Ladies and Gentlemen:

California Water Service Group, a Delaware corporation (the “**Company**”), on the one hand, and each of Robert W. Baird & Co. Incorporated, BofA Securities, Inc., Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Janney Montgomery Scott LLC, RBC Capital Markets, LLC, Blaylock Van, LLC and Samuel A. Ramirez & Company, Inc., each as sales agent and, if applicable, as forward seller (in any such capacity, each a “**Manager**” and together the “**Managers**”), and each of Robert W. Baird & Co. Incorporated, Bank of America, N.A., Morgan Stanley & Co. LLC, Wells Fargo Bank, National Association and Royal Bank of Canada, each as forward purchaser (in such capacity, each a “**Forward Purchaser**” and together the “**Forward Purchasers**”), on the other hand, agree to the provisions in this Agreement (as defined below). For purposes of clarity, it is understood and agreed by the parties hereto that, if Shares (as defined below) are offered or sold through any Manager acting as forward seller for a Forward Purchaser, then such Manager, as forward seller, shall be acting as sales agent for such Forward Purchaser with respect to the offering and sale of such Shares, and, except in cases where this Agreement expressly refers to a Manager acting as sales agent for the Company or unless otherwise expressly stated or the context otherwise requires, references in this Agreement to any Manager acting as sales agent shall also be deemed to apply to such Manager when acting as forward seller, *mutatis mutandis*.

The Company may, subject to the terms and conditions stated herein, (i) issue, offer and sell from time to time through or to the Managers, severally and not jointly, as sales agents and/or principals, shares of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), and (ii) instruct the Managers, severally and not jointly, from time to time to offer and sell shares of Common Stock as forward sellers for the applicable Forward Purchasers, all on the terms and subject to the conditions set forth in this Agreement; provided that the aggregate number of shares of Common Stock sold pursuant to clauses (i) and (ii) above shall not exceed an aggregate gross sales price of \$350,000,000 (the “**Shares**”). Any Shares issued, offered and sold by the Company from time to time through or to any of the Managers pursuant to this Agreement and, if applicable, any separate written agreement referred to in the immediately succeeding sentence are hereinafter sometimes called “Primary Shares.” The Company acknowledges and agrees that each Manager shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Manager in a separate written agreement containing the terms and conditions of such sale. References herein to this “**Agreement**” or to matters contained “herein” or “hereunder,” or words of similar import, mean this equity distribution agreement, as the same may be amended or supplemented from time to time.

The Company may also enter into one or more forward stock purchase transactions with any of the Forward Purchasers as set forth in one or more separate sets of letter agreements, each in substantially the form attached as Schedule IV hereto and with such changes therein as the parties thereto may agree (each, including its Master Confirmation and Supplemental Confirmation, a “**Confirmation**” and, collectively, the “**Confirmations**”). Under each Confirmation, the Company will, on the terms and subject to the conditions set forth in such Confirmation and in this Agreement, issue and deliver to the applicable Forward Purchaser or an affiliate thereof (including the Manager affiliated with such Forward Purchaser) up to the maximum number of shares of Common Stock as may be sold in accordance with this Agreement in connection with such Confirmation. In connection with any Confirmation entered into as contemplated by this Agreement, it is contemplated that the applicable Forward Purchaser or an affiliate thereof will attempt to borrow and then offer, through the applicable Manager, acting as forward seller and sales agent for such Forward Purchaser, the applicable Shares for sale on the terms and subject to the conditions set forth in this Agreement.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement on Form S-3, including a prospectus, relating to the securities (the “**Shelf Securities**”), including the Shares, to be offered from time to time by the Company. The registration statement as of its most recent effective date, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A or Rule 430B under the Securities Act of 1933, as amended (the “**Securities Act**”), or any subsequent registration statement on Form S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company with respect to any Shares, is hereinafter referred to as the “**Registration Statement**”, and the related prospectus covering the Shelf Securities and filed as part of the Registration Statement, together with any amendments or supplements thereto as of the most recent effective date of the Registration Statement, is hereinafter referred to as the “**Basic Prospectus**”. “**Prospectus Supplement**” means the most recent prospectus supplement, relating to the Shares, filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, in the form furnished by the Company to the Managers in connection with the offering of the Shares. Except where the context otherwise requires, “**Prospectus**” means the Basic Prospectus, as supplemented by the Prospectus Supplement and the most recent Interim Prospectus Supplement (as defined in Section 6(c) below), if any. For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act. “**Permitted Free Writing Prospectuses**” means the documents listed on Schedule I hereto or otherwise approved in writing by the Managers in accordance with Section 6(b). As used herein, the terms “Registration Statement”, “Basic Prospectus”, “Prospectus Supplement”, “Interim Prospectus Supplement” and “Prospectus” shall include the documents, if any, incorporated by reference therein. The terms “**supplement**”, “**amendment**” and “**amend**” as used herein with respect to the Registration Statement, the Basic Prospectus, the Prospectus Supplement, any Interim Prospectus Supplement or the Prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that are deemed to be incorporated by reference therein (each document incorporated or deemed to be incorporated by reference into any Registration Statement, Basic Prospectus, Prospectus Supplement, Interim Prospectus Supplement or Prospectus, whether filed prior to, on or after the date hereof, an “**Incorporated Document**” and collectively, the “**Incorporated Documents**”). The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares; *provided, however*, that the Managers and Forward Purchasers are provided with a reasonable opportunity to review any such registration statement or prospectus.

Reference is made to the Equity Distribution Agreement, dated April 29, 2022, among the Company and certain of the Managers (the “**Prior Agreement**”). The Prior Agreement is hereby terminated as of the date hereof by mutual agreement of the parties thereto pursuant to section 10(c) thereof.

1. *Representations and Warranties.* The Company represents and warrants to and agrees with each Manager and each Forward Purchaser at the date of this Agreement, each Time of Sale (as defined in Section 1(b)), each Representation Date (as defined in Section 6(l)), each Settlement Date (as defined in Section 4), and each Trade Date (as defined in each Confirmation, if any) that:

(a) The Registration Statement has become, or will become, effective under the Securities Act prior to the issuance of any Instructions by the Company; no stop order suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Prospectus is in effect; and no proceedings for such purpose or pursuant to Section 8A under the Securities Act are pending before or threatened by the Commission. If the Registration Statement is an automatic shelf registration statement as defined in Rule 405 under the Securities Act, the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to use the Registration Statement as an automatic shelf registration statement, and the Company has not received notice that the Commission objects to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) (A) At the respective times the Registration Statement and each amendment thereto became effective, (B) at each deemed effective date with respect to the Managers pursuant to Rule 430B(f)(2) under the Securities Act (each, a “**Deemed Effective Time**”), (C) as of each time Shares are sold pursuant to this Agreement (each, a “**Time of Sale**”), (D) at each Settlement Date (as defined below) and (E) at all times during which 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 any sale of Shares (the “**Delivery Period**”), the Registration Statement complied and will comply in all material respects with the requirements of the Securities Act and the rules and regulations under the Securities Act; (ii) the Basic Prospectus complied, or will comply, at the time it was, or will be filed, with the Commission, complies as of the date hereof (if filed with the Commission on or prior to the date hereof) and, as of each Time of Sale and at all times during the Delivery Period, will comply in all material respects with the requirements of the Securities Act and the rules and regulations under the Securities Act; (iii) each of the Prospectus Supplement, any Interim Prospectus Supplement and the Prospectus will comply, as of the date that such document is filed with the Commission, as of each Time of Sale, as of each Settlement Date and at all times during the Delivery Period, in all material respects with the requirements of the Securities Act and the rules and regulations under the Securities Act; and (iv) the Incorporated Documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and any further Incorporated Documents so filed and incorporated by reference, when they are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

(c) (i) As of the date hereof, at the respective times the Registration Statement and each amendment thereto became effective and at each Deemed Effective Time, the Registration Statement did not and will not contain an 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; (ii) as of each Time of Sale, the Prospectus (as amended and supplemented at such Time of Sale) and any Permitted Free Writing Prospectus then in use, considered together (collectively, the “**General Disclosure Package**”), did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (iii) as of its date, the Prospectus did not contain 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 under which they were made, not misleading; and (iv) at any Settlement Date, the Prospectus (as amended and supplemented at such Settlement Date) did not and will not contain 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 under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statement or omission made in reliance upon and in conformity with information furnished in writing to the Company by the Managers expressly for use in the Prospectus or in the General Disclosure Package (it being understood and agreed that such information consists solely of the information specified in Section 8(b)).

(d) Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act relating to the offer and sale of the Shares has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus relating to the offer and sale of the Shares 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 the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus relating to the offer and sale of the Shares, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Shares or until any earlier date that the Company notified or notifies the Managers and the Forward Purchasers, did not, does not and will not include any material information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus. Except for the Permitted Free Writing Prospectuses, if any, furnished to and approved by the Managers and the Forward Purchasers in accordance with Section 6(b), the Company has not prepared, used or referred to, and will not, prepare, use or refer to, any free writing prospectus relating to the offer and sale of the Shares.

(e) (i)(A) At the time of filing the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus) and (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Shelf Securities in reliance on the exemption of Rule 163 under the Securities Act, the Company was not an “ineligible issuer” as defined in Rule 405 of the Securities Act; and (ii)(A) at the time of filing of the Registration Statement, (B) at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Shares and (C) at the date hereof, the Company was not and is not an “ineligible issuer” as defined in Rule 405 under the Securities Act.

(f) Shares of Common Stock are listed on the New York Stock Exchange (“NYSE”), and the Company has not received any notice from the NYSE regarding the delisting of such shares from the NYSE. The Shares are duly listed and admitted and authorized for trading, subject to official notice of issuance, on the NYSE. To the Company’s knowledge, there are no affiliations or associations between (i) any member of Financial Industry Regulatory Authority (“FINRA”) and (ii) the Company or any of the Company’s officers, directors or 5% or greater security holders or any beneficial owner of the Company’s unregistered equity securities that were acquired at any time on or after the 180th day immediately preceding the date the Registration Statement was initially filed with the Commission, except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package. As of each Settlement Date, as of each date on which the Company shall enter into a Confirmation with any Forward Purchaser and as of each date on which Confirmation Shares are delivered pursuant to a Confirmation, the Shares and any Confirmation Shares will be duly listed and admitted and authorized for trading on the NYSE, subject only to official notice of issuance.

(g) 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 or lease its property and to conduct its business as described in each of the Registration Statement, the Prospectus and the General Disclosure Package 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, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(h) Each “significant subsidiary” (as such term is defined in Rule 405 of the Securities Act) of the Company (each a “**Subsidiary**” and, collectively, the “**Subsidiaries**”) has been duly incorporated, organized or formed, is validly existing as a corporation or other business entity in good standing under the laws of the jurisdiction of its incorporation, organization or formation, has the corporate or other business entity power and authority to own or lease its property and to conduct its business as described in each of the Registration Statement, the Prospectus and the General Disclosure Package 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, singly or in the aggregate, have a material adverse effect on the Company and its Subsidiaries, taken as a whole; all of the issued shares of capital stock or other equity interests of each Subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, free and clear of all liens, encumbrances, equities or claims.

(i) This Agreement has been duly authorized, executed and delivered by the Company.

(j) The authorized and outstanding capitalization of the Company is as set forth in the General Disclosure Package, subject, in each case, to the issuance of shares of Common Stock upon exercise of stock options and warrants disclosed as outstanding in the General Disclosure Package, and the grant of options under existing stock option plans described in the General Disclosure Package. The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in, or incorporated by reference into, each of the Registration Statement, the Prospectus and the General Disclosure Package.

(k) The shares of Common Stock outstanding prior to the issuance of the Primary Shares have been duly authorized and are validly issued, fully paid and non-assessable.

(l) The Primary Shares have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of the Primary Shares will not be subject to any preemptive or similar rights.

(m) Any shares of Common Stock to be issued and delivered by the Company pursuant to any Confirmation (the “**Confirmation Shares**”) have been duly authorized by the Company for issuance, sale and/or delivery to the applicable Forward Purchaser or any of its affiliates pursuant to such Confirmation and, when issued and delivered by the Company in accordance with such Confirmation upon payment of any consideration required by such Confirmation, will be validly issued, fully paid and non-assessable; the Confirmation Shares conform and will conform to the statements relating thereto contained in the Registration Statement, the Prospectus and the General Disclosure Package and such statements conform and will conform to the rights set forth in the instruments defining the same; and the issuance, sale and/or delivery of any Confirmation Shares will not be subject to any preemptive or other similar rights. The issuance, sale and/or delivery by the Company of any Confirmation Shares to a Forward Purchaser pursuant to a Confirmation in accordance with the terms thereof and the delivery by such Forward Purchaser or any of its affiliates of such Confirmation Shares, during the term of and at any settlement of such Confirmation, to close out open borrowings of Common Stock created in the course of the hedging activities by such Forward Purchaser or any of its affiliates relating to such Forward Purchaser’s exposure under such Confirmation, do not and will not require registration under the Securities Act.

(n) The Company has reserved and has available, and will reserve and keep available at all times, free of preemptive rights, the maximum number of authorized and unissued shares of Common Stock necessary to satisfy the Company's obligations to issue Primary Shares and Confirmation Shares pursuant to this Agreement and any Confirmation.

(o) On the date of each Confirmation, such Confirmation will have been duly authorized, executed and delivered by the Company and will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency or other similar laws now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability and except that rights to indemnity thereunder may be limited by applicable law and public policy; and the description of each Confirmation set forth in the Registration Statement, the Prospectus and the General Disclosure Package is and will be true, correct and complete in all material respects.

(p) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement and any Confirmation will not contravene any provision of (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 by-laws of the Company, or (iii) any contract, agreement, obligation, covenant or instrument to which the Company or any of its subsidiaries (or any of their respective assets) is subject or bound that is material to the Company and its subsidiaries, taken as a whole, except that in the case of clauses (i) and (iii) as would not, individually or in the aggregate, have a material adverse effect on the Company or on the power and ability of the Company to perform its obligations under this Agreement and any Confirmation. No approval, authorization, consent, or order of, or filing or qualification with, any federal, state, local or foreign governmental or regulatory commission, board, body, authority, agency or court, is required in connection with the performance by the Company of its obligations under this Agreement and any Confirmation, except (1) such as has previously been obtained, (2) such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares or (3) the filing of a supplemental listing application and related materials with the NYSE.

(q) 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), operations or earnings of the Company and its subsidiaries, taken as a whole, from that set forth in the Registration Statement, the Prospectus and the General Disclosure Package.

(r) There are no actions, suits, claims, or proceedings pending or, to the knowledge of the Company, threatened to which the Company or any of its subsidiaries or any of their respective directors or officers is or would be (in their capacity as a director or officer of the Company or a subsidiary) a party or of which any of their respective properties is subject (i) other than any such action, suit, claim, or proceeding accurately described in all material respects in the Registration Statement, the Prospectus and the General Disclosure Package and that would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under this Agreement or any Confirmation or to consummate the transactions contemplated by this Agreement, any Confirmation and the General Disclosure Package or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described in all material respects; and there are no statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described in all material respects or filed as required.

(s) The Company is not, and after giving effect to the offering and sale of the Primary Shares in accordance with this Agreement and any Confirmation Shares issued pursuant to any Confirmation and the application of the proceeds thereof as described in the General Disclosure Package will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(t) Except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, the Company and each of 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, water quality, the environment or hazardous or toxic materials, substances or wastes, pollutants or contaminants, including petroleum and petroleum biproducts (“**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, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(u) Except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, there are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital, operating or other 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, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(v) There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.

(w) None of the Company or any of its subsidiaries, or any director or officer, thereof, or, to the Company's knowledge, any controlled affiliate, employee, agent or representative of the Company or of any of its subsidiaries or controlled affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any person to improperly influence official action by that person for the benefit of the Company or its subsidiaries or controlled affiliates, or to otherwise secure any improper advantage, or to any person in violation of (a) the U.S. Foreign Corrupt Practices Act of 1977, (b) the UK Bribery Act 2010, or (c) any other applicable law, regulation, order, decree or directive having the force of law and relating to bribery or corruption (collectively, the "**Anti-Corruption Laws**").

(x) The operations of the Company and each of its subsidiaries are and have been conducted at all times in material compliance with all applicable anti-money laundering laws, rules, and regulations, including the financial recordkeeping and reporting requirements contained therein, and including the Bank Secrecy Act of 1970, applicable provisions of the USA PATRIOT Act of 2001, the Money Laundering Control Act of 1986, and the Anti-Money Laundering Act of 2020 (collectively, the "**Anti-Money Laundering Laws**").

(y) (i) None of the Company, any of its subsidiaries, or any director or officer, employee thereof, or, to the Company's knowledge, any agent, controlled affiliate, employee, or representative of the Company or any of its subsidiaries, is an individual or entity ("**Person**") that is, or is owned or controlled by one or more Persons that are:

(A) the subject of any sanctions administered or enforced by the United States Government (including the U.S. Department of the Treasury's Office of Foreign Assets Control and the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or any other relevant sanctions authority (collectively, "**Sanctions**"), or

(B) located, organized or resident in a country or territory that is the subject of comprehensive territorial Sanctions (including, without limitation, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, or any other Covered Region of Ukraine identified pursuant to Executive Order 14065, Crimea, Cuba, Iran, North Korea and Syria).

(ii) The Company and each of its subsidiaries, (a) have not, since the more recent of April 24, 2019 or 10 years prior to the date of the Agreement, engaged in, (b) are not now engaged in, and (c) will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was, or whose government is or was, the subject of Sanctions.

(z) The Company will not, directly or indirectly, use the proceeds of the offering of the Primary Shares in accordance with this Agreement and any Confirmation Shares issued pursuant to any Confirmation, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(i) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is, or whose government is, the subject of Sanctions;

(ii) to fund or facilitate any money laundering or terrorist financing activities; or

(iii) in any other manner that would cause or result in a violation of any Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(aa) The Company and its subsidiaries have conducted and will conduct their businesses in material compliance with the Anti-Corruption Laws and Sanctions, 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 Anti-Corruption Laws, the Anti-Money Laundering Laws or Sanctions is pending or, to the knowledge of the Company, threatened. The Company and its subsidiaries and controlled affiliates have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with the Anti-Corruption Laws, the Anti-Money Laundering Laws, Sanctions, and with the representations and warranties related thereto contained herein.

(bb) Subsequent to the respective dates as of which information is given in each of the Registration Statement, the Prospectus and the General Disclosure Package, (i) the Company and its subsidiaries, taken as a whole, have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction that is required to be disclosed in a Form 8-K; (ii) the Company has not purchased any of its outstanding capital stock, other than from its employees or other service providers in connection with the termination of their service pursuant to equity compensation plans or agreements disclosed in the Registration Statement, the Prospectus and the General Disclosure Package or in connection with the exercise of the Company's right of first refusal upon a proposed transfer, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock (other than the exercise of equity awards or grants of equity awards or forfeiture of equity awards outstanding as of such respective dates as of which information is given in the Registration Statement, the Prospectus and the General Disclosure Package, in each case granted pursuant to the equity compensation plans disclosed in the Registration Statement, the Prospectus and the General Disclosure Package), short-term debt or long-term debt of the Company and its subsidiaries, taken as a whole, except in each case as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package. Except as otherwise would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, no subsidiary of the Company is subject to any material direct or indirect prohibition on paying any dividends to the Company, on making any other distribution on such subsidiary's capital stock, on repaying to the Company any loans or advances to such subsidiary from the Company or on transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company.

(cc) The Company and each of its subsidiaries (i) have either good title in the easement as listed on the applicable title insurance policy or good and marketable title in fee simple to all real property owned by them, and (ii) have good and marketable title to all personal property which is material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances and defects except (1) such as are disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, (2) such as are not material and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries, taken as a whole, or (3) as would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole. Any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and, to the Company's knowledge, enforceable leases except in each case (A) such as are disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, (B) such as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries, or (C) as would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(dd) (i) The Company and each of its subsidiaries own or have rights to or can acquire on commercially reasonable terms a valid license to all patents, patent applications, inventions, unregistered and registered copyrights, know how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), designs, unregistered and registered trademarks, service marks, logos and trade names and all goodwill associated therewith (collectively, "**Intellectual Property Rights**") described as being owned by the Company or such subsidiary in the General Disclosure Package or which are used in their businesses. Except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, neither the Company nor any of its subsidiaries has received any notice alleging any infringement, misappropriation or other violation of Intellectual Property Rights of a third party. To the Company's knowledge, neither the Company nor any of its subsidiaries infringes, misappropriates or otherwise violates, or has infringed, misappropriated or otherwise violated, any Intellectual Property Rights of a third party. The Company and its subsidiaries have taken reasonable steps in accordance with customary industry practice to maintain all information intended to be maintained as confidential or as a trade secret. To the Company's knowledge, no such information or trade secret has been disclosed by the Company or any of its subsidiaries to any person except pursuant to appropriate non-disclosure and/or license agreements.

(ee) (i) The Company and its subsidiaries have used all software and other materials distributed under a “free,” “open source,” or similar licensing model (including but not limited to the MIT License, Apache License, GNU General Public License, GNU Lesser General Public License and GNU Affero General Public License) (“**Open Source Software**”) in compliance in all material respects with all license terms applicable to such Open Source Software; and (ii) neither the Company nor any of its subsidiaries has used or distributed any Open Source Software in any manner that requires or has required (A) the Company or any of its subsidiaries to permit reverse engineering of any software code or other technology owned by the Company or any of its subsidiaries or (B) any software code or other technology owned by the Company or any of its subsidiaries to be (1) disclosed or distributed in source code form, (2) licensed for the purpose of making derivative works or (3) redistributed at no charge, except in the case of (A) and (B) above, as would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ff) The Company and each of its subsidiaries have complied in all material respects and are presently in compliance in all material respects with the Company’s privacy and security policies, and with all obligations, applicable laws, rules and regulations regarding the collection, use, processing, transfer, import, export, storage, protection, disposal and disclosure by the Company or any of its subsidiaries of personally identifiable information or any other information collected from or provided by third parties.

(gg) The Company and each of its subsidiaries have taken commercially reasonable steps to protect the information technology systems and data used in connection with the operation of the Company’s or its subsidiaries’ business against loss, unauthorized distribution, use, access, modification, or other misuse, and have implemented backup and disaster recovery technology consistent with industry standards and practices in all material respects. To the Company’s knowledge, except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, there has been no material security breach or attack or other material misuse or compromise of or relating to any such information technology system or data, and there is no action, suit or proceeding or claim against the Company or any of its subsidiaries arising out of alleging any of the foregoing.

(hh) The financial statements included or incorporated by reference in each of the Registration Statement, the Prospectus and the General Disclosure Package, together with the related notes and schedules thereto, present fairly in all material respects the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity for the periods specified and have been prepared in compliance in all material respects with the requirements of the Securities Act and the Exchange Act and in conformity with generally accepted accounting principles in the United States ("U.S. GAAP") applied on a consistent basis throughout the periods covered thereby. The other financial information included or incorporated by reference in each of the Registration Statement, the Prospectus and the General Disclosure Package has been derived from the accounting records of the Company and its consolidated subsidiaries and are fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company. The statistical, industry-related and market-related data included in each of the Registration Statement, the Prospectus and the General Disclosure Package are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate and such data is consistent with the sources from which they are derived, in each case in all material respects.

(ii) Deloitte & Touche LLP, who have expressed its opinion with respect to the financial statements of the Company and its subsidiaries filed with the Commission as part of the Registration Statement and included in each of the Registration Statement, the Prospectus and the General Disclosure Package, is an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States).

(jj) No material labor dispute with the employees of the Company or any of its subsidiaries exists, except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package, or, to the knowledge of the Company, is threatened; and the Company has no knowledge of any existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, contractors or vendors that could, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(kk) (i) Each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended ("ERISA")) for which the Company, any of its subsidiaries or any of their "ERISA Affiliates" (defined as any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Internal Revenue Code of 1986, as amended (the "Code") would be deemed at any relevant time to be a "single employer" or otherwise aggregated with the Company or any of its subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code) would have any liability (each a "Plan") has been maintained in compliance in all respects with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code except where failure to do so would not have a material adverse effect; (ii) with respect to each Plan subject to Title IV of ERISA (a) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur that would result in a material adverse effect, (b) no "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred or is reasonably expected to occur that would result in a material adverse effect and (c) neither the Company, nor any of its subsidiaries nor any of their ERISA Affiliates has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA) that would result in a material adverse effect; and (iii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification that would result in a material adverse effect.

(ll) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are, in the reasonable judgment of the Company, prudent and customary in the businesses in which they are engaged; neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has any reason to believe that it 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, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package.

(mm) The Company and each of its subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to obtain such certificates, authorizations and permits would not, individually or the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as disclosed in the Registration Statement, the Prospectus and the General Disclosure Package.

(nn) 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 and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; (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; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement is accurate. Except as described in the Registration Statement, the Prospectus and the General Disclosure Package, since the end of the Company’s most recent audited fiscal year, there has been (i) no significant deficiency or material weakness in the Company’s internal control over financial reporting (whether or not remediated) 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.

(oo) The Company maintains a system of “disclosure controls and procedures” (as defined in Rules 13a-15 and 15d-15 of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to provide reasonable assurance that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. The Company has carried out evaluations of the effectiveness of its disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act and such disclosure controls and procedures were effective as of the end of the Company’s most recently completed fiscal quarter. 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 (the “**Sarbanes-Oxley Act**”), and the statements made in each such certification are accurate. The Company, its subsidiaries and, to its knowledge, its directors and officers are each in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act.

(pp) The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement and any Confirmation (taking into account any valid extensions thereof) and have paid all taxes, including any interest, additions to tax or penalties applicable thereto, required to be paid whether or not shown as due thereon (except where the failure to file or pay would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, or, except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries which has had (nor does the Company nor any of its subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its subsidiaries and which could reasonably be expected to have) a material adverse effect on the Company and its subsidiaries, taken as a whole.

(qq) 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.

(rr) Neither the Company nor any of its subsidiaries nor, to their knowledge, any of their respective 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.

(ss) Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action prohibited by Regulation M under the Exchange Act in connection with the distribution of the Shares contemplated hereby. The Common Stock is an “actively traded security” excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

2. *Sale of Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Managers agree that the Company may from time to time seek to (i) offer and sell Shares through the Managers, acting as sales agents for the Company, and (ii) if the Company enters into a Confirmation with a Forward Purchaser designated by the applicable Manager, then, in consultation with such Forward Purchaser and such Manager, instruct such Manager, acting as forward seller for such Forward Purchaser, to offer and sell the Shares borrowed by such Forward Purchaser or an affiliate thereof from third parties as contemplated by such Confirmation, on the terms and subject to the conditions set forth in this Agreement and such Confirmation. Sales of Shares, if any, as contemplated by this Agreement, made through the Managers, as sales agents of the Company, or as forward sellers for the related Forward Purchasers, will be made by means of ordinary brokers’ transactions on the NYSE or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, by privately negotiated transactions (including block sales) or by any other methods permitted by applicable law:

(a) The Shares to be sold through any Manager, acting as sales agent for the Company or as forward seller for a Forward Purchaser, may be sold on any Trading Day on which the Company has submitted its Instruction (as defined below) to such Manager. On any Trading Day, the Company may instruct only one Manager, as sales agent for the Company or as forward seller for a Forward Purchaser, to offer or sell Shares, and, if it determines to do so, shall instruct the applicable Manager by email notice, or by any other method mutually agreed to in writing by the Company and such Manager and, if applicable, the Forward Purchaser designated by such Manager, in the form specified in Schedule V hereto (each, an “**Instruction**”). Subject to the terms and conditions specified herein (including, without limitation, the accuracy of the representations and warranties of the Company and the performance by the Company of its covenants and other obligations contained herein and the satisfaction of the additional conditions specified in Section 5 hereof) and to the acceptance of such Instruction by the applicable Manager, which Instruction such Manager may decline for any reason in its sole discretion, such Manager shall use its commercially reasonable efforts, consistent with its normal trading and sales practices, to sell, as sales agent for the Company or as forward seller for the applicable Forward Purchaser, as the case may be, all of the Shares so designated by the Company in accordance with such Instruction on the terms and subject to the conditions set forth in this Agreement. On any Trading Day, the Company shall give at least one business day’s prior written notice by facsimile or email to the Managers and the Forward Purchasers as to any change of the Manager through whom sales of Shares as sales agent for the Company or forward seller for any Forward Purchaser will be made. The parties hereto, severally and not jointly, each acknowledge and agree that (A) there can be no assurance that any Manager (whether acting as sales agent for the Company or as forward seller for a Forward Purchaser) will be successful in selling any Shares or that any Forward Purchaser or any of its affiliates will be successful in borrowing any Shares or selling any Shares through the applicable Manager, as forward seller, (B) no Manager or any of its affiliates will incur any liability or obligation to the Company if they fail to sell Shares (whether acting as sales agent for the Company or as forward seller for a Forward Purchaser) other than any liability that a Manager may incur as a result of the failure by such Manager to use its commercially reasonable efforts, consistent with its normal trading and sales practices, to sell such Shares as required by this Agreement, and (C) no Manager, Forward Purchaser or any of their respective affiliates shall incur any liability or obligation for any failure by any Forward Purchaser or any of its affiliates to borrow, offer or sell any Shares as a result of any of the circumstances specified in clauses (i) or (ii) of Section 2(e). As used herein, “**Trading Day**” shall mean any trading day on the NYSE, other than a day on which the NYSE is scheduled to close prior to its regular weekday closing time.

(b) The Company or a Manager through whom Shares are to be sold, whether as sales agent for the Company or as forward seller for a Forward Purchaser, on any Trading Day may, upon notice to the other party and if such Manager is acting as forward seller for a Forward Purchaser, such Forward Purchaser, by telephone (confirmed promptly by email or facsimile), immediately suspend the offering of Shares through such Manager, whether as sales agent for the Company or as forward seller for a Forward Purchaser, for any reason and at any time; provided, however, that such suspension shall not affect or impair the respective obligations of the Company or such Manager with respect to the Shares sold, or with respect to Shares that an investor has agreed to purchase, hereunder prior to the giving of such notice.

(c) A Manager shall provide written confirmation (which may be by facsimile or email) to the Company following the close of trading on the NYSE each Trading Day on which Shares are sold under this Agreement through such Manager, whether acting as sales agent for the Company or as forward seller for a Forward Purchaser. Each such confirmation shall set forth (i) the amount of Shares sold on such day, (ii) the gross offering proceeds received from such sale, (iii) the aggregate net proceeds to the Company or the applicable Forward Purchaser, as the case may be, and (iv) the commission payable by the Company to such Manager with respect to such sales.

(d) At each Time of Sale, Settlement Date, Trade Date and Representation Date (as defined below), the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement and to have affirmed its compliance with the covenants and agreements contained in this Agreement. Any obligation of the Managers to use their commercially reasonable efforts to sell the Shares for the Company as sales agents or as forward sellers for the Forward Purchasers shall be subject to the continuing accuracy of the representations and warranties, and continuing compliance with the covenants and agreement of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 5 of this Agreement.

(e) If the Company enters into a Confirmation with a Forward Purchaser, then, as set forth in such Confirmation and notwithstanding anything herein to the contrary, in the event that either (i) such Forward Purchaser or an affiliate thereof is unable to borrow and deliver any Shares for sale under this Agreement pursuant to the terms of such Confirmation, or (ii) in the commercially reasonable judgment of such Forward Purchaser, it is either impracticable to do so or such Forward Purchaser or an affiliate thereof would incur a stock loan cost that is equal to or greater than the maximum stock loan rate per annum to be set forth in the relevant Confirmation, then the applicable Manager, as forward seller, shall be obligated to use commercially reasonable efforts, consistent with its normal trading and sales practices, to sell only the aggregate number of Shares that such Forward Purchaser or an affiliate thereof is able to, and that in the commercially reasonable judgment of such Forward Purchaser it is practicable to, so borrow below such cost. For the avoidance of doubt, the obligations of any Manager or any Forward Purchaser or an affiliate thereof hereunder with respect to the borrowing of or offer or sale of any Shares in connection with a forward stock purchase transaction shall be subject to the related Confirmation being effective and not having been terminated. In the event of a conflict between the terms of this Agreement and Confirmation, the terms of such Confirmation shall control.

(f) Notwithstanding any other provision of this Agreement, the Company, the Managers and the Forward Purchasers agree that no offering or sale of Shares shall take place, the Company shall not request the offering or sales of any Shares that would be sold and the Managers and Forward Purchasers shall not be obligated to purchase, sell or offer to sell, during any period in which the Company's insider trading policy, as it exists on the date of this Agreement, would prohibit the purchase or sale of Common Stock by persons subject to such policy, or during any other period in which the Company is, or could be deemed to be, in possession of material non-public information.

3. *Fee.* The compensation a Manager for sales of the Shares with respect to which such Manager acts as sales agents hereunder shall be as set forth in Schedule III.

4. *Payment, Delivery and Other Obligations.* Settlement for sales of the Shares pursuant to this Agreement will occur on the first Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each such day, a "**Settlement Date**"). On each Settlement Date, the Shares sold through a Manager as sales agent for the Company or as forward seller for a Forward Purchaser for settlement on such date shall be issued and delivered by the Company or such Forward Purchaser, as the case may be, to such Manager against payment of the net proceeds from the sale of such Shares. Settlement for all such Shares shall be effected by free delivery of the Shares by the Company or its transfer agent or such Forward Purchaser, to such Manager's or its designee's account (*provided* that such Manager shall have given the Company or the applicable Forward Purchaser written notice of such designee prior to the Settlement Date) at The Depository Trust Company or by such other means of delivery as may be mutually agreed upon by the parties hereto, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, in return for payment in same day funds delivered to the account designated by the Company or the Forward Purchaser, as the case may be. If the Company, or its transfer agent (if applicable), shall default on its obligation to deliver the Shares on any Settlement Date, the Company shall (i) hold such Manager harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay such Manager any commission, discount or other compensation to which it would otherwise be entitled absent such default.

5. *Conditions to the Managers' Obligations.* The obligations of the Managers are subject to the following conditions:

(a) Since the later of (A) the date of this Agreement and (B) the immediately preceding Representation Date:

(i) no order suspending the effectiveness of the Registration Statement shall be in effect, and no proceeding for such purpose or pursuant to Section 8A under the Securities Act shall be pending before or threatened by the Commission;

(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 of the securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization", as such term is defined in Section 3(a)(62) of the Exchange Act; and

(iii) there shall not have occurred any change, or any development involving a prospective change, in the assets, business, condition (financial or otherwise), operations or earnings of the Company and its subsidiaries, taken as a whole, from the respective dates of the Registration Statement, the Prospectus and the General Disclosure Package that, in the Managers' judgment, is material and adverse and that makes it, in the Managers' judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus.

(b) The Managers and the Forward Purchasers shall have received on each date specified in Section 6(l) a certificate, dated such date and signed by an executive officer of the Company, to the effect set forth in Sections 5(a)(i) and 5(a)(ii) above and to the effect that (i) the representations and warranties of the Company contained in this Agreement are true and correct as of such date; (ii) the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before such date; (iii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company, threatened by the Commission; (iv) the Prospectus Supplement, any Interim Prospectus Supplement and each Permitted Free Writing Prospectus have been timely filed with the Commission under the Securities Act (in the case of a Permitted Free Writing Prospectus, to the extent required by Rule 433 under the Securities Act), and all requests for additional information on the part of the Commission have been complied with or otherwise satisfied; (v) as of such date and as of each Time of Sale, if any, prior to such date, the Registration Statement did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and (vi) as of such date and as of each Time of Sale, if any, prior to such date, the General Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that no such certificate shall apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by the Managers expressly for use in the General Disclosure Package (it being understood and agreed that such information consists solely of the information specified in Section 8(b)).

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Managers and the Forward Purchasers shall have received on each date specified in Section 6(m), and on such other dates as may be reasonably requested by the Managers or the Forward Purchasers, an opinion and negative assurance letter of Gibson, Dunn & Crutcher LLP, outside counsel for the Company, dated such date, in form and substance reasonably satisfactory to the Managers.

(d) The Managers and the Forward Purchasers shall have received on the initial Representation Date, and on such other dates as may be reasonably requested by the Managers or the Forward Purchasers in the event there is a change in the California Public Utilities Code that could regulate the issuance of the Shares, an opinion of Nossaman LLP, regulatory counsel for the Company, regarding certain regulatory matters, dated such date, in form and substance reasonably satisfactory to the Managers and the Forward Purchasers.

(e) The Managers and the Forward Purchasers shall have received on each date specified in Section 6(n), and on such other dates as may be reasonably requested by the Managers or the Forward Purchasers, an opinion and negative assurance letter of Latham & Watkins LLP, counsel for the Managers and the Forward Purchasers, dated such date, in form and substance reasonably satisfactory to the Managers and the Forward Purchasers.

The opinions of counsel for the Company described in Section 5(c) and Section 5(d) above shall be rendered to the Managers at the request of the Company and shall so state therein.

(f) The Managers shall have received on each date specified in Section 6(o), a letter dated such date in form and substance reasonably satisfactory to the Managers, from Deloitte & Touche LLP, independent public accountants for the Company, (A) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act, the Exchange Act and the Public Company Accounting Oversight Board, (B) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "**Initial Comfort Letter**") and (C) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement, the Prospectus Supplement, the Prospectus or any issuer free writing prospectus relating to the offer and sale of the Shares, as amended and supplemented to the date of such letter.

(g) All filings with the Commission required by Rule 424 under the Securities Act in connection with the offer and sale of the Shares have been filed by each Time of Sale or related Settlement Date shall have been made within the applicable time period prescribed for such filing by Rule 424 (without reliance on Rule 424(b)(8)).

(h) The Shares and any Confirmation Shares shall have been approved for listing on the NYSE, subject only to a notice of issuance at or prior to the applicable Settlement Date.

(i) The Common Stock shall be an “actively-traded security” excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

(j) The Company shall have entered into a Confirmation with the related Forward Purchaser if it wishes that a Manager, acting as forward seller for the applicable Forward Purchaser, offer and sell Shares.

6. *Covenants of the Company.* The Company covenants with the Managers as follows:

(a) To furnish to each of the Managers and the Forward Purchasers copies of the Registration Statement (excluding exhibits) and copies of the Prospectus (or the Prospectus as amended or supplemented) in such quantities as the Managers and the Forward Purchasers may from time to time reasonably request. In case a Manager is required to deliver, under the Securities Act (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), a prospectus relating to the Shares after the nine-month period referred to in Section 10(a)(3) of the Securities Act, or after the time a post-effective amendment to the Registration Statement is required pursuant to Item 512(a) of Regulation S-K under the Securities Act, upon the request of any Manager and any Forward Purchaser, and at its own expense, the Company shall prepare and deliver to each Manager and each Forward Purchaser as many copies as each Manager and each Forward Purchaser may reasonably request of an amended Registration Statement or amended or supplemented prospectus complying with Item 512(a) of Regulation S-K or Section 10(a)(3) of the Securities Act, as the case may be; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to the Managers to the extent such document is available on the Commission’s Electronic Data Gathering, Analysis and Retrieval system or any successor system thereto (“**EDGAR**”).

(b) Before amending or supplementing the Registration Statement or the Prospectus, other than amendments or supplements deemed to be made by filing an Incorporated Document, to furnish to each of the Managers and each of the Forward Purchasers a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which any Manager or any Forward Purchaser reasonably objects (other than any prospectus supplement relating to the offering of Shelf Securities other than the Shares). To furnish to each of the Managers and each of the Forward Purchasers a copy of each proposed free writing prospectus relating to the offer and sale of Shares to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus relating to the offer and sale of Shares to which any Manager or any Forward Purchaser reasonably objects. Not to take any action that would result in a Manager, a Forward Purchaser or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus relating to the offer and sale of Shares prepared by or on behalf of a Manager or a Forward Purchaser that such Manager or such Forward Purchaser otherwise would not have been required to file thereunder.

(c) To file, subject to Section 6(b) above, promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus Supplement and for the duration of the Delivery Period. For the duration of the Delivery Period, to include in its quarterly reports on Form 10-Q, and in its annual reports on Form 10-K, a summary detailing, for the relevant reporting period, (i) the number of Shares sold through the Managers, acting as sales agents for the Company, pursuant to this Agreement, and the number of Shares sold through the Managers, acting as forward sellers for the Forward Purchasers, pursuant to this Agreement and any Confirmation, (ii) the net proceeds received by the Company from such sales and (iii) the compensation paid by the Company to the Managers with respect to such sales (or alternatively, to prepare a prospectus supplement (each, an “**Interim Prospectus Supplement**”) with such summary information and, at least once a quarter and subject to Section 6(b) above, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rules 430A, 430B or 430C under the Securities Act)).

(d) To file any Permitted Free Writing Prospectus to the extent required by Rule 433 under the Securities Act and to provide copies of the Prospectus and such Prospectus Supplement and each Permitted Free Writing Prospectus (to the extent not previously delivered or filed on EDGAR) to each of the Managers and each of the Forward Purchasers via email in “.pdf” format on such filing date to an email account designated by each Manager and, at any Manager’s request, to also furnish copies of the Prospectus and such Prospectus Supplement to the NYSE and each other exchange or market on which sales of the Shares were effected, in each case, as may be required by the rules or regulations of the NYSE or such other exchange or market.

(e) During the Delivery Period to advise the Managers and the Forward Purchasers, promptly after it receives notice thereof, of the issuance of any stop order by the Commission, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any order preventing or suspending the use of any prospectus relating to the Shares or suspending any such qualification, to promptly use its best efforts to obtain its withdrawal.

(f) If, after the date hereof and during the Delivery Period, either (i) any event shall occur or condition exist as a result of which the Prospectus would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (ii) for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file any document in order to comply with the Securities Act or the Exchange Act, to promptly advise the Managers and the Forward Purchasers by telephone (with confirmation in writing or email) and to promptly prepare and file, subject to Section 6(b) above, with the Commission an amendment or supplement to the Registration Statement or the Prospectus which will correct such statement or omission or effect such compliance and to furnish to each of the Managers and each of the Forward Purchasers as many copies as each of the Managers and each of the Forward Purchasers may reasonably request of such amendment or supplement.

(g) To endeavor to qualify the Shares and any Confirmation Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Managers and the Forward Purchasers shall reasonably request and to continue such qualifications in effect so long as necessary under such laws for the distribution of the Shares and any Confirmation Shares, as the case may be; *provided, however*, that nothing contained herein shall require the Company to qualify to do business in any jurisdiction or to execute a general consent to service of process in any jurisdiction in which it is not otherwise subject.

(h) To make generally available to the Company's security holders and to the Managers and the Forward Purchasers as soon as practicable an earnings statement covering a period of at least 12 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.

(i) Whether or not the transactions contemplated in this Agreement or in any Confirmation are consummated or this Agreement or in any Confirmation is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement and any Confirmation, including: (i) the fees, disbursements and expenses of the Company's counsel and the fees, disbursements and expenses of the Company's accountants, each in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any Prospectus Supplement, the Prospectus, any free writing prospectus relating to the offer and sale of the Shares prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including the filing fees payable to the Commission relating to the Shares (within the time required by Rule 456(b)(1), if applicable), all printing costs associated therewith, and the mailing and delivering of copies thereof to each of the Managers and each of the Forward Purchasers, in the quantities hereinabove specified, (ii) all costs and expenses related to the issuance, transfer and delivery of the Shares and any Confirmation Shares, including any transfer or other taxes payable thereon, (iii) all expenses in connection with the qualification of the Shares and any Confirmation Shares for offer and sale under state securities laws as provided in Section 6(g) above, including filing fees and the reasonable fees and disbursements of counsel for the Managers and the Forward Purchasers in connection with such qualification, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Managers and the Forward Purchasers (up to an amount not to exceed \$10,000) incurred in connection with review and qualification by FINRA of the offering contemplated by this Agreement, (v) all costs and expenses incident to listing the Shares and any Confirmation Shares on the NYSE, (vi) the costs and charges of any transfer agent, registrar or depository, and (vii) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section 6. It is understood, however, that except as provided in this Section 6 and Section 8, the Managers and the Forward Purchasers will each pay all of its costs and expenses, including any advertising expenses connected with any offers the Managers may make.

(j) In the event this Agreement has not been terminated, if the third anniversary of the initial effective date of the Registration Statement occurs before all the Shares have been sold, prior to such third anniversary, to file, subject to Section 6(b), a new shelf registration statement and to take any other action necessary to permit the public offering of the Shares to continue without interruption (references herein to the Registration Statement shall include the new registration statement declared effective by the Commission).

(k) To use its commercially reasonable efforts to cause the Shares and any Confirmation Shares to be listed for trading on the NYSE and to maintain such listing.

(l) Upon commencement of the offering of the Shares under this Agreement (and upon the recommencement of the offering of the Shares under this Agreement following the termination of a suspension of sales hereunder), and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than (x) amendments or supplements deemed to be made by filing an Incorporated Document or (y) a prospectus supplement relating solely to the offering of Shelf Securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Managers and the Forward Purchasers shall otherwise reasonably request and the Managers reasonably determine that the information contained in, or incorporated by reference into, such Form 8-K is material to a holder of Common Stock or to an offering of the Shares) (such commencement date (and any such recommencement date, if applicable) and each such date referred to in (i) and (ii) above, a “**Representation Date**”), to furnish or cause to be furnished to the Managers and the Forward Purchasers forthwith a certificate dated and delivered within two business days of such Representation Date, in form reasonably satisfactory to the Managers and the Forward Purchasers, to the effect that the statements contained in the certificate referred to in Section 5(b) of this Agreement are true and correct at the time of such commencement, recommencement, amendment, supplement or filing, as the case may be, as though made at and as of such time modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such certificate. The requirement to deliver a certificate under this Section 6(l), other than the requirement to deliver a certificate under this Section 6(l) when the Company files an Annual Report on Form 10-K under the Exchange Act, shall be automatically waived at a time at which no Instruction is pending (a “**Waiver**”), which Waiver shall continue until the earlier to occur of the date the Company delivers an Instruction hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Representation Date when the Company relied on a Waiver and did not provide the Managers with a certificate under this Section 6(l), then before the Company delivers the Instruction or a Manager sells any Shares, the Company shall provide the Manager with a certificate required under this Section 6(l), dated the date of the Instruction.

(m) (i) On the initial Representation Date and thereafter within two business days of each subsequent Representation Date for which the Company delivers a certificate pursuant to Section 6(l), the Company shall cause to be furnished to the Managers and the Forward Purchasers, dated as of such date, in form and substance satisfactory to the Managers and the Forward Purchasers, the written opinion and negative assurance letter of Gibson, Dunn & Crutcher LLP, outside counsel for the Company, as described in Section 5(c), modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion; and (ii) on the initial Representation Date, the Company shall cause to be furnished to the Managers and the Forward Purchasers, dated as of such date, in form and substance satisfactory to the Managers and the Forward Purchasers, the written opinion of Nossaman LLP, outside regulatory counsel for the Company, as described in Section 5(d), modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion.

(n) On the initial Representation Date and thereafter within two business days of each subsequent Representation Date for which the Company delivers a certificate pursuant to Section 6(l), Latham & Watkins LLP, counsel to the Managers and the Forward Purchasers, shall furnish to the Managers and the Forward Purchasers, dated as of such date, in form and substance satisfactory to the Managers and the Forward Purchasers, the written opinion and negative assurance letter, as described in Section 5(e), modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion.

With respect to Sections 6(m) and 6(n) above, in lieu of delivering such an opinion and negative assurance letter for dates subsequent to the commencement of the offering of the Shares under this Agreement such counsel may furnish the Managers and the Forward Purchasers with a letter to the effect that the Managers and the Forward Purchasers may rely on a prior opinion and negative assurance letter delivered under Section 6(m) or Section 6(n), as the case may be, to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such subsequent Representation Date).

(o) On the initial Representation Date and thereafter within two business days of each subsequent Representation Date for which the Company delivers a certificate pursuant to Section 6(l), Deloitte & Touche LLP, independent public accountants of the Company, shall deliver to the Managers and the Forward Purchasers the comfort letter(s) described in Section 5(f).

(p) To comply with the Due Diligence Protocol attached hereto on Schedule II and any other due diligence review or call reasonably requested by any of the Managers or any of the Forward Purchasers, unless a Waiver is applicable. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Representation Date when the Company relied on a Waiver, then the Company shall comply with the Due Diligence Protocol before the Company delivers an Instruction (which for such calendar quarter shall be considered a Representation Date) or a Manager, acting as sales agent for the Company or as forward seller for a Forward Purchaser, sells any Shares.

(q) To reserve and keep available at all times, free of preemptive rights, the Primary Shares and any Confirmation Shares for the purpose of enabling the Company to satisfy its obligations hereunder.

(r) That it consents to the Managers', the Forward Purchasers' and their respective affiliates' trading in the Common Stock for their own accounts and for the accounts of their clients at the same time as sales of the Shares occur pursuant to this Agreement and any Confirmation.

(s) That each acceptance by the Company of an offer to purchase the Shares hereunder shall be deemed to be an affirmation to the Managers and the Forward Purchasers for the purpose of performing their obligations pursuant to this Agreement and any Confirmation that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of such date, and an undertaking that such representations and warranties will be true and correct, as of the Time of Sale and the Settlement Date for the Shares relating to such acceptance as though made at and as of each of such dates (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares); for clarification, the affirmation of the representations and warranties shall not be used for any purpose other than performing their obligations pursuant to this Agreement.

(t) Prior to instructing a Manager pursuant to Section 2 hereof to make sales on any given day (or as otherwise agreed between the Company and the Managers), a subcommittee of the Company's board of directors (the "**Board**"), authorized by either the Board or any authorized committee of the Board, (i) shall have approved the minimum price and maximum number of Shares to be sold and (ii) shall have provided to the Company an authorizing resolution approving such minimum price and maximum number. The Instruction provided to such Manager by the Company, pursuant to Section 2, on such day shall reflect the terms of such authorizing resolution.

(u) Not to sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to sell or otherwise dispose of or agree to dispose of, directly or indirectly, any shares of the Common Stock or securities convertible into or exchangeable or exercisable for the Common Stock or warrants or other rights to purchase the Common Stock or any other securities of the Company that are substantially similar to the Common Stock or permit the registration under the Securities Act of any shares of the Common Stock, except for (i) the registration of the Shares and the sales through the Managers pursuant to this Agreement or the issuances/deliveries of any Confirmation Shares pursuant to any Confirmation, (ii) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Prospectus, (iii) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company or (iv) any shares of Common Stock issued pursuant to any non-employee director stock plan, equity incentive plan, dividend reinvestment plan or stock purchase plan of the Company, during the Delivery Period, without (A) giving the Managers and the Forward Purchasers at least three business days' prior written notice specifying the nature of the proposed sale and the date of such proposed sale and (B) the Managers and the Forward Purchasers suspending activity under this program for such period of time as requested by the Company.

(v) The Company will not (i) take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, unlawful stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares or (ii) sell, bid for, purchase or pay any person any compensation for soliciting purchases of the Shares except pursuant to this Agreement.

(w) In connection with entering into any Confirmation, the Company and its Affiliates will not enter into any transaction with respect to shares of Common Stock that hedges or offsets the transaction under the Confirmation. For purposes of the foregoing, "**Affiliate**" means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with such person or entity. For purposes of this definition, "control" when used with respect to any person or entity means ownership of 50% or more of the voting power or value of such person or entity.

7. *Covenants of the Managers.* Each of the Managers, whether acting as sales agent for the Company or as forward seller for any Forward Purchaser, covenants with the Company as follows:

(a) Not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of a Manager that otherwise would not be required to be filed by the Company thereunder, but for the action of such Manager.

(b) To keep Instructions submitted pursuant to this Agreement, including the content and existence thereof, strictly confidential, to not use such information other than for fulfilling its obligations under this Agreement, and to not disclose such information, except: (a) as required or requested by applicable law, regulation, regulatory or legal process, or (b) to its employees and representatives who need to know such information for fulfilling its obligations under this Agreement.

8. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each of the Managers and each of the Forward Purchasers, the directors, officers, employees, affiliates and agents of any Manager and any Forward Purchaser, and each person, if any, who controls any of the Managers or any of the Forward Purchasers within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and each affiliate of each of the Managers and each of the Forward Purchasers within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) that arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, the Prospectus Supplement (including any Interim Prospectus Supplement), the General Disclosure Package, any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or any amendment or supplement thereto, or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any such untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to the Managers furnished to the Company in writing by the Managers expressly for use therein (it being understood and agreed that such information consists solely of the information specified in Section 8(b)).

(b) The Managers, severally and not jointly, agree to indemnify and hold harmless the Company, its directors, its officers, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to the Managers and each of the Forward Purchasers, but only with reference to information relating to the Managers furnished to the Company in writing by the Managers expressly for use in the Registration Statement, the Prospectus, the Prospectus Supplement (including any Interim Prospectus Supplement), the General Disclosure Package, any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or any amendment or supplement thereto (it being understood and agreed that such information consists solely of the following information in the Prospectus: (i) the names of the Managers, and (ii) the first through fifth sentences in the fourth-to-last paragraph in the section "Plan of Distribution.").

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b), such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing, and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the applicable Manager or Managers and any applicable Forward Purchaser, in the case of parties indemnified pursuant to Section 8(a), and by the Company, in the case of parties indemnified pursuant to Section 8(b). The indemnifying party 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 from and against any loss or liability 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 the second and third sentences of this paragraph, 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 of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 8(a) or 8(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the applicable Manager or Managers and any applicable Forward Purchaser, on the other hand, from the offering of the Shares or (ii) if the allocation provided by Section 8(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in Section 8(d)(i) above but also the relative fault of the Company, on the one hand, and of the applicable Manager or Managers and any applicable Forward Purchaser, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the applicable Manager or Managers and any applicable Forward Purchaser, on the other hand, in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by the Company (and, for purposes of the foregoing, the Company shall be deemed to have received net proceeds from the sale of Shares sold through any of the applicable Managers, acting as forward seller for a Forward Purchaser in connection with a Confirmation entered into by such Forward Purchaser, in an amount equal to the proceeds that would have been received by the Company upon full physical settlement of the Confirmation Shares under such Confirmation, assuming that the aggregate amount payable by such Forward Purchaser to the Company for such Confirmation Shares is equal to the aggregate amount of net proceeds received by such Forward Purchaser from the sale of such Shares through such Manager) bear to (i) with respect to the applicable Manager or Managers, the total commissions received by the applicable Manager or Managers in connection therewith and (ii) with respect to any applicable Forward Purchaser, the aggregate value of the Spread (as defined in the relevant Confirmation) in respect of the forward purchase transaction related to such Shares (net of any hedging and other costs associated with such transaction and the related Confirmation). The relative fault of the Company, on the one hand, and the applicable Manager or Managers and any applicable Forward Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Managers or the Forward Purchaser and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, on the one hand, and the Managers and the Forward Purchasers, on the other hand, agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* (even if the Managers and the Forward Purchasers were treated as one entity for such purposes) allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, the applicable Manager, Managers or Forward Purchaser shall not be required to contribute any amount in excess of the amount by which the total compensation received by such Manager or such Forward Purchaser with respect to the offering of the Shares exceeds the amount of any damages that such Manager or such Forward Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. 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 remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Managers, the Forward Purchasers, any person controlling any of the Managers or the Forward Purchasers or any affiliate of any of the Managers or the Forward Purchasers or other indemnified parties referred to in Section 8(a) or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares or any Confirmation Shares.

9. *Effectiveness.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

10. *Termination.* (a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. This Agreement shall automatically terminate on the date that is one business day prior to the third anniversary of the initial effective date of the Registration Statement, without any notice requirement, in the event that the Company does not file a new shelf registration statement relating to the Shares on or prior to such date; *provided, however*, that if an Instruction is pending, the Company will provide written notice to the applicable Managers and Forward Purchasers of such termination. Any terminations pursuant to this Section 10 shall be without liability of any party to any other party, except that (i) with respect to any pending sale through a Manager or Managers for the Company, the obligations of each of the Company and the Manager pursuant to Sections 3, 4, 5, 6 and 7 shall remain in full force and effect notwithstanding such termination with respect to and to the extent of the Shares to be sold in such pending sale; and (ii) the provisions of Section 1, Section 7(b), and Section 8 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) Each Manager, acting for itself, and each Forward Purchaser, acting for itself, shall have the right, by giving written notice to the Company and to each other Manager and each of the other Forward Purchasers, and as hereinafter specified, to terminate this Agreement, solely with respect to itself, in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that (i) with respect to any pending sale through such terminating Manager for the Company, the obligations of each of the Company and the Manager pursuant to Sections 3, 4, 5, 6 and 7 shall remain in full force and effect notwithstanding such termination with respect to and to the extent of the Shares to be sold in such pending sale; and (ii) the provisions of Section 1, Section 7(b), and Section 8 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) This Agreement shall remain in full force and effect until and unless terminated pursuant to Section 10(a) or (b) above or otherwise by mutual agreement of the parties; *provided* that any such termination by mutual agreement or pursuant to this clause (c) shall in all cases be deemed to provide that Section 1, Section 7(b), and Section 8 of this Agreement shall remain in full force and effect.

(d) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Managers, the Forward Purchasers or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall settle in accordance with the provisions of Section 4.

11. *Entire Agreement.* (a) This Agreement represents the entire agreement among the Company, each of the Manager and each of the Forward Purchasers with respect to the preparation of any Registration Statement, Prospectus Supplement or the Prospectus, the conduct of the offering and the sale and distribution of the Shares.

(b) The Company acknowledges that in connection with the offering of the Shares: (i) the Managers and the Forward Purchasers have acted and will act at arm's length and owe no fiduciary duties to, the Company or any other person, (ii) the Managers and the Forward Purchasers owe the Company only those duties and obligations set forth in this Agreement and any Confirmation and prior written agreements (to the extent not superseded by this Agreement), if any, (iii) the Managers and the Forward Purchasers may have interests that differ from those of the Company, and (iv) none of the activities of the Managers and the Forward Purchasers in connection with the transactions contemplated herein constitutes a recommendation, investment advice, or solicitation of any action by the Managers and the Forward Purchasers with respect to any entity or natural person. The Company waives to the full extent permitted by applicable law any claims it may have against any of the Managers and the Forward Purchasers arising from an alleged breach of fiduciary duty in connection with the sale and distribution of the Shares.

12. *Recognition of the U.S. Special Resolution Regimes.* (a) In the event that any Manager or any Forward Purchaser that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Manager or such Forward Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Manager or any Forward Purchaser that is a Covered Entity or a BHC Act Affiliate of such Manager or such Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Manager or such Forward Purchaser are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section a “**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). “**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. “**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

13. *Counterparts.* This Agreement 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. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

14. *Applicable Law.* This Agreement and any claim, controversy or dispute arising under or related thereto shall be governed by and construed in accordance with the internal laws of the State of New York.

15. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

16. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and (A) if to the Managers shall be delivered, mailed or sent to Robert W. Baird & Co. Incorporated, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 (Attn: Syndicate Department), Facsimile: (414) 298-7474, with a copy to the Legal Department; BofA Securities, Inc., One Bryant Park, New York, NY 10036 (Attn: ATM Execution Group), Telephone: (646) 855-6770, Email: dg.atm_execution@bofa.com; Morgan Stanley & Co. LLC, 1585 Broadway, New York, NY 10036 (Attn: Equity Syndicate Desk, with a copy to the Legal Department); Wells Fargo Securities, LLC, 500 West 33rd Street, New York, New York 10001, Attention: Equity Syndicate Department (fax no: (212) 214-5918), Email: ECMOriginationPower@wellsfargo.com; Janney Montgomery Scott LLC, Attn: Equity Syndicate Department, 1717 Arch Street, Philadelphia PA 19103, Email: syndicate@janney.com; RBC Capital Markets, LLC, 200 Vesey Street, New York, NY 10281 (Attn: TJ Opladen), Telephone: (212) 905-5846, Email: tj.opladen@rbccm.com; Blaylock Van, LLC, 600 Lexington Avenue, 3rd Floor, New York, NY 10022 (Attn: Michael Bonagura), Telephone: (212) 715-6607, Email: mbonagura@brv-llc.com and ajones@brv-llc.com and Samuel A. Ramirez & Company, Inc., 14 East 52nd Street, 5th Floor, New York, NY 10022 (Attn: Sandra Baumb), Telephone: 212-378-7134, Email: sandra.baumb@ramirezco.com; (B) if to the Forward Purchasers shall be delivered, mailed or sent to Robert W. Baird & Co. Incorporated, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 (Attn: Syndicate Department), Facsimile: (414) 298-7474, with a copy to the Legal Department; Bank of America, N.A., c/o BofA Securities, Inc., One Bryant Park, New York, NY 10036 (Attn: Christine Roemer), Telephone: (646) 855-8901, Email: christine.roemer@bofa.com; Morgan Stanley & Co. LLC, 1585 Broadway, New York, NY 10036 (Attn: Equity Syndicate Desk, with a copy to the Legal Department); Wells Fargo Bank, National Association, 500 West 33rd Street, New York, New York 10001 (Telecopy No.: (212) 214-5913), Attention: Structuring Services Group (Facsimile: (212) 214-5918), with a copy to corporatederivativenotifications@wellsfargo.com and Royal Bank of Canada, 200 Vesey Street, 8th Floor, New York, NY 10281, (Attn: TJ Opladen), Telephone: (212) 905-5846, Email: tj.opladen@rbccm.com and (C) if to the Company shall be delivered, mailed or sent to California Water Service Group, 1720 North First Street, San Jose, CA 95112-4598, Attn: General Counsel, telephone: (408) 367-8200.

[Signature page follows]

Very truly yours,

CALIFORNIA WATER SERVICE GROUP

By: /s/ James P. Lynch

Name: James P. Lynch

Title: Senior Vice President, Chief Financial Officer and Treasurer

[Signature Page to the Equity Distribution Agreement]

Accepted as of the date first written above

ROBERT W. BAIRD & CO. INCORPORATED,

as Manager and Forward Seller and as Forward Purchaser, solely as the recipient and/or beneficiary of certain representations, warranties, covenants and indemnities set forth in this Agreement

By: /s/ Sandy Walter
Name: Sandy Walter
Title: Managing Director, Co-Head of Equity Capital Markets

[Signature Page to the Equity Distribution Agreement]

BOFA SECURITIES, INC.,
as Manager and Forward Seller

By: /s/ John Lau
Name: John Lau
Title: Managing Director

[Signature Page to the Equity Distribution Agreement]

MORGAN STANLEY & CO. LLC,

as Manager and Forward Seller and as Forward Purchaser, solely as the recipient and/or beneficiary of certain representations, warranties, covenants and indemnities set forth in this Agreement

By: /s/ Mauricio Dominguez
Name: Mauricio Dominguez
Title: Vice President

[Signature Page to the Equity Distribution Agreement]

WELLS FARGO SECURITIES, LLC,

as Manager and Forward Seller

By: /s/ Michael Tiedemann
Name: Michael Tiedemann
Title: Managing Director

[Signature Page to the Equity Distribution Agreement]

JANNEY MONTGOMERY SCOTT LLC,

as Manager and Forward Seller

By: /s/ David Lau
Name: David Lau
Title: Managing Director, Head of Equities

[Signature Page to the Equity Distribution Agreement]

RBC CAPITAL MARKETS, LLC,

as Manager and Forward Seller

By: /s/ Young Kim
Name: Young Kim
Title: Managing Director

BLAYLOCK VAN, LLC,
as Manager and Forward Seller

By: /s/ Charles Slavinsky
Name: Charles Slavinsky
Title: Vice President / Deputy CCO

[Signature Page to the Equity Distribution Agreement]

SAMUEL A. RAMIREZ & COMPANY, INC.,

as Manager and Forward Seller

By: /s/ Raymond S. O'Connor
Name: Raymond S. O'Connor
Title: Managing Director

[Signature Page to the Equity Distribution Agreement]

BANK OF AMERICA, N.A.,

as Forward Purchaser, solely as the recipient and/or beneficiary of certain representations, warranties, covenants and indemnities set forth in this Agreement

By: /s/ Christine Roemer
Name: Christine Roemer
Title: Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Forward Purchaser, solely as the recipient and/or beneficiary of certain representations, warranties, covenants and indemnities set forth in this Agreement

By: /s/ Kevin Brillhart
Name: Kevin Brillhart
Title: Managing Director

[Signature Page to the Equity Distribution Agreement]

ROYAL BANK OF CANADA,

as Forward Purchaser, solely as the recipient and/or beneficiary of certain representations, warranties, covenants and indemnities set forth in this Agreement

By: /s/ Brian Ward
Name: Brian Ward
Title: Managing Director

[Signature Page to the Equity Distribution Agreement]

Permitted Free Writing Prospectuses

None.

Due Diligence Protocol

Set forth below are guidelines for use by the Company and the Managers and the Forward Purchasers in connection with the Managers' and the Forward Purchasers' continuous due diligence efforts in connection with the sale and distribution of the Shares pursuant to the Agreement and any Confirmation. For the avoidance of doubt, the Company has agreed that no sales under the Agreement and any Confirmation will be requested or made at any time the Company is, or could be deemed to be, in possession of material non-public information with respect to the Company.

1. On or immediately prior to each Representation Date, in addition to the documents provided pursuant to Sections 6(l), (m), (n) and (o) of the Agreement, the Managers and the Forward Purchasers expect to conduct a due diligence call with the appropriate business, financial and legal representatives of the Company.
2. On the date of or promptly after the reasonable request by the Managers or the Forward Purchasers, but not more than once per month, the Managers and the Forward Purchasers expect to conduct a due diligence call with the appropriate business, financial, accounting and/or legal representatives of the Company and that the Company shall provide the certificate referred to in Section 5(b) of the Agreement.
3. In the event that the Company requests a Manager to sell on any one Trading Day an amount of Shares that would be equal to or greater than 20% of the average daily trading volume (calculated based on the most recent three completed Trading Days) of the Company's common stock, the Manager(s), whether acting as sales agent for the Company or as forward seller for any Forward Purchaser(s), and the Forward Purchaser(s) expect(s) to conduct a due diligence call with the appropriate business, financial, accounting and legal representatives of the Company and that the Company shall provide the certificate referred to in Section 5(b) of the Agreement.

The foregoing is an expression of current intent only, and shall not in any manner limit the Managers' or the Forward Purchasers' rights under the Agreement and any Confirmation, including the Managers' or the Forward Purchasers' right to require such additional due diligence procedures as the Managers and the Forward Purchasers may reasonably request pursuant to the Agreement and any Confirmation.

SCHEDULE III

The compensation to a Manager for sales of the Shares with respect to which such Manager acts as sales agent hereunder shall be equal to 1.00% of the gross offering proceeds of the Shares sold by such Manager pursuant to this Agreement, or as otherwise agreed among the parties to this Agreement.

The compensation to a Manager for sales of the Shares with respect to which such Manager acts as forward seller for a Forward Purchaser shall be equal to 1.00% of the gross sales price of the Shares sold by such Manager pursuant to this Agreement and the applicable Confirmation, or as otherwise agreed among the parties to this Agreement and such Confirmation.

Schedule III-1

Form of Master ATM Forward Confirmation

Schedule IV-1

Form of Instruction

To: [MANAGER]

To: [FORWARD PURCHASER]²

Date: []

From: California Water Service Group

Attention: []

VIA ELECTRONIC MAIL

This Instruction sets forth the terms of the agreement of [MANAGER] (the “**Manager**”) with California Water Service Group (the “**Company**”) relating to the sale of shares of the Company’s common stock, par value \$0.01 per share, having an aggregate gross sales price of up to \$350,000,000 pursuant to the Equity Distribution Agreement between the Company, the Manager and the other parties thereto, dated May 14, 2025, and as may be amended and supplemented from time to time (the “**Agreement**”). Unless otherwise defined below, capitalized terms defined in the Agreement shall have the same meanings when used herein.

By countersigning or otherwise indicating in writing the Manager’s acceptance of this Instruction (an “**Acceptance**”), the Manager shall have agreed with the Company to engage in the following transaction:

Manager is to act as sales agent for:	<u>[Company][Forward Purchaser]</u>
Maximum number of Shares to be sold:	<u>[*] Shares</u>
Maximum number of Shares to be sold on any Trading Day or any limitations on the number of Shares that may be sold on any one day:	<u>[*]</u>
Minimum price at which Shares may be sold:	<u>[\$[*]]</u>
Date(s) on which Shares may be sold:	<u>[DATE] – [DATE]</u>
Compensation to Manager:	<u>[*] bps</u>

² Include for forward.

[Spread:

[*] bps]³

[Expected maturity date of forward:

[DATE]]⁴

[Minimum stock loan cost to trigger additional adjustments of forward:

[*] bps]⁵

[Stock loan cost to trigger acceleration of forward:

[*] bps]⁶

Any other limitations:

The transaction set forth in this Instruction will not be binding until the Manager delivers its Acceptance, which may be delivered by e-mail.

The transaction, if it becomes binding on the parties, shall be subject to all of the representations, warranties, covenants and other terms and conditions of the Agreement, except to the extent amended or modified hereby, all of which are expressly incorporated herein by reference. Each of the representations and warranties set forth in the Agreement shall be deemed to have been made at and as of every Time of Sale, every Settlement Date and every Representation Date.

If the foregoing conforms to your understanding of our agreement, please so indicate your Acceptance by signing below.

Very truly yours,

CALIFORNIA WATER SERVICE GROUP

By:

Name:

Title:

ACCEPTED as of the date first above written

³ Include for forward.

⁴ Include for forward.

⁵ Include for forward.

⁶ Include for forward.

[In addition, the undersigned hereby notifies the Company that the Forward Purchaser is

[IF APPLICABLE, MANAGER TO INSERT NAME OF FORWARD PURCHASER HERE]]

[NAME OF MANAGER]

By: _____

Name:

Title:

[Note: The Manager’s Acceptance may also be evidenced by a separate written acceptance referencing this Instruction and delivered in accordance with the Agreement]

Form of Master ATM Forward Confirmation

Date: [*], 20[*]

To: California Water Service Group
1720 North First Street
San Jose, California 95112
E-mail: [*]
Attention: [*]

From: [DEALER NAME AND NOTICE INFORMATION]

Ladies and Gentlemen:

The purpose of this letter agreement (this “**Master Confirmation**”) is to confirm the terms and conditions of the Transactions to be entered into from time to time between [DEALER NAME] (“**Dealer**”) and California Water Service Group (the “**Counterparty**”) on each Trade Date specified in the relevant supplemental confirmation delivered hereunder and substantially in the form of Annex A hereto (each, a “**Supplemental Confirmation**”). This letter agreement with an accompanying Supplemental Confirmation and, as applicable, the related Pricing Notification (as defined below) each constitutes a “Confirmation,” under the ISDA 2002 Master Agreement specified below.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Master Confirmation and each Supplemental Confirmation.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties’ entry into the Transactions to which this Master Confirmation relates on the terms and conditions set forth below.

1. Each Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the applicable Transaction. Each Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (without any Schedule but (i) with the elections set forth in such Confirmation and (ii) with the election that the “Cross Default” provisions of Section 5(a)(vi) of the Agreement will apply to Dealer and Counterparty as if (a) the phrase “, or becoming capable at such time of being declared,” were deleted from Section 5(a)(vi)(1) of the Agreement, (b) (i) the “Threshold Amount” with respect to Dealer were three percent of the [shareholders’] [members’] equity of [Dealer][[Dealer’s ultimate parent entity] (“**Dealer Parent**”)] and (ii) the “Threshold Amount” with respect to Counterparty were USD 20,000,000, (c) the following language were added to the end of Section 5(a)(vi) of the Agreement: “Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party’s receipt of written notice of its failure to pay.”; and (d) the term “Specified Indebtedness” had the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party’s banking business). In the event of any inconsistency between provisions of the Agreement, the Equity Definitions, this Master Confirmation, the relevant Supplemental Confirmation or the relevant Pricing Notification (if applicable), the following will prevail for the purpose of the applicable Transaction in the order of precedence indicated: (i) the Pricing Notification (if applicable), (ii) the Supplemental Confirmation, (iii) this Master Confirmation, (iv) the Equity Definitions and (v) the Agreement. The parties hereby agree that, other than the Transactions to which this Master Confirmation relates, no Transaction shall be governed by the Agreement. For purposes of the Equity Definitions, each Transaction is a Share Forward Transaction. If there exists any ISDA Master Agreement between Dealer or any of its Affiliates (each, a “**Dealer Affiliate**”) and Counterparty or any confirmation or other agreement between a Dealer Affiliate and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between such Dealer Affiliate and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer Affiliate and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement. Notwithstanding anything to the contrary in any other agreement between the parties, the Transaction shall not be a “Specified Transaction” (or similarly treated) under any other agreement between the parties. For purposes of the Equity Definitions, this Transaction is a Share Forward Transaction.

2. The terms of the particular Transactions to which this Master Confirmation relates are as follows:

General Terms:	
Trade Date:	For each Transaction, as specified in the Supplemental Confirmation.
Effective Date:	For each Transaction, the first day occurring on or after the Trade Date on which Shares sold through [AGENT NAME], acting as forward seller for Dealer (the “ <i>Agent</i> ”) pursuant to the [Equity Distribution Agreement] dated [●], 2025 and as may be amended from time to time, among Counterparty, Dealer and the other parties thereto [(the “ <i>Equity Distribution Agreement</i> ”)] have settled.
Seller:	Counterparty
Buyer:	Dealer
Shares:	Shares of common stock of Counterparty, par value USD \$0.01 per share (Ticker Symbol: “CWT”)
Pricing Notification:	If applicable as indicated in the Supplemental Confirmation, after the Hedge Completion Date, Dealer will furnish Counterparty with a notification substantially in the form of Annex B hereto.
Number of Shares:	For each Transaction, as specified in the Supplemental Confirmation.
Initial Number of Shares:	The Number of Shares as of the Hedge Completion Date.

Hedge Completion Date:	For each Transaction, the earliest of (i) the date specified in writing as the Hedge Completion Date by Counterparty, (ii) any Settlement Date and (iii) the date specified in the applicable Supplemental Confirmation.
Initial Forward Price:	For each Transaction, as set forth in the Supplemental Confirmation.
Forward Price:	(a) On the Hedge Completion Date, the Initial Forward Price; and (b) on each calendar day thereafter, (i) the Forward Price as of the immediately preceding calendar day <u>multiplied</u> by (ii) the <u>sum of</u> 1 and the Daily Rate for such day; <i>provided</i> that, on each Forward Price Reduction Date, the Forward Price in effect on such date shall be the Forward Price otherwise in effect on such date, <u>minus</u> the Forward Price Reduction Amount for such Forward Price Reduction Date.
Daily Rate:	For any day, a rate (which may be positive or negative) equal to (i) (a) the Overnight Bank Funding Rate for such day <u>minus</u> (b) the Spread <u>divided by</u> (ii) 365.
Overnight Bank Funding Rate:	For any day, the rate set forth for such day opposite the caption “Overnight Bank Funding Rate”, as such rate is displayed on Bloomberg Screen “OBFR01<Index><GO>”, or any successor page; <i>provided</i> that, if no rate appears for a particular day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.
Spread:	For each Transaction, as specified in the Supplemental Confirmation.
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Forward Price Reduction Dates:	For each Transaction, as specified in the Supplemental Confirmation.
Forward Price Reduction Amounts:	For each Forward Price Reduction Date, the Forward Price Reduction Amount set forth opposite such date in the Supplemental Confirmation.
Exchange:	The New York Stock Exchange
Related Exchange(s):	All Exchanges
Clearance System:	The Depository Trust Company
Securities Act:	The Securities Act of 1933, as amended

Exchange Act:	The Securities Exchange Act of 1934, as amended
Market Disruption Event:	Section 6.3(a) of the Equity Definitions is hereby amended by replacing the first sentence in its entirety with the following: “‘Market Disruption Event’ means in respect of a Share or an Index, the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, (iii) an Early Closure or (iv) a Regulatory Disruption, in each case that the Calculation Agent determines, in its commercially reasonable judgment, is material”.
Early Closure:	Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.
Regulatory Disruption:	Any event that Dealer, based on the advice of counsel, determines makes it reasonably necessary or appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures that generally apply to transactions of a nature and kind similar to the particular Transaction and have been adopted in good faith by Dealer (whether or not such policies or procedures are imposed by law or have been voluntarily adopted by Dealer) for Dealer to refrain from or decrease any market activity in connection with such Transaction.
Settlement:	
Settlement Currency:	USD (all amounts shall be converted to the Settlement Currency in good faith and in a commercially reasonable manner by the Calculation Agent)
Settlement Date:	Any Scheduled Trading Day following the Effective Date and up to and including the Final Date that is either: (a) designated by Counterparty as a “ Settlement Date ” by a written notice (a “ Settlement Notice ”) that satisfies the Settlement Notice Requirements, if applicable, and is delivered to Dealer no later than (i) [12:00 pm NY time on the][the second] ¹² Scheduled Trading Day immediately prior to such Settlement Date, which may be the Final Date, if Physical Settlement applies, and (ii) a number of Scheduled Trading Days prior to such Settlement Date specified in the Supplemental Confirmation (the “ Notice Period ”), which may be the Final Date, if Cash Settlement or Net Share Settlement applies; <i>provided</i> that, if Dealer shall have fully unwound its hedge with respect to the portion of the Number of Shares to be settled during an Unwind Period by a date that is more than one Scheduled Trading Day prior to a Settlement Date specified above, Dealer may, by written notice to Counterparty, specify any Scheduled Trading Day prior to such original Settlement Date as the Settlement Date, such notice to be delivered at least one Scheduled Trading Day prior to the designated Settlement Date; or

¹ Dealer to confirm.

² BofA to use “the second”

(b) designated by Dealer as a Settlement Date pursuant to the “Termination Settlement” provisions of Paragraph 7(g);

provided that the Final Date will be a Settlement Date if on such date the Number of Shares for which a Settlement Date has not already been designated is greater than zero, and *provided, further*; that, following the occurrence of at least five consecutive Disrupted Days during an Unwind Period and while such Disrupted Days are continuing, Dealer may designate any subsequent Scheduled Trading Day as the Settlement Date with respect to the portion of the Settlement Shares, if any, for which Dealer has determined an Unwind Purchase Price during such Unwind Period, it being understood that the Unwind Period with respect to the remainder of such Settlement Shares shall recommence on the next succeeding Exchange Business Day that is not a Disrupted Day in whole.

Final Date: For each Transaction, as specified in the Supplemental Confirmation (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day)

Settlement Shares: (a) With respect to any Settlement Date other than the Final Date, the number of Shares designated as such by Counterparty in the relevant Settlement Notice or designated by Dealer pursuant to the “Termination Settlement” provisions of Paragraph 7(g), as applicable; *provided* that the Settlement Shares so designated shall, in the case of a designation by Counterparty, (i) not exceed the Number of Shares at that time and (ii) be at least equal to the lesser of the Minimum Number of Settlement Shares and the Number of Shares at that time, in each case with the Number of Shares determined taking into account pending Settlement Shares; and

(b) with respect to the Settlement Date on the Final Date, a number of Shares equal to the Number of Shares at that time;

in each case with the Number of Shares determined taking into account pending Settlement Shares.

Minimum Number of Settlement Shares: For each Transaction, as specified in the Supplemental Confirmation.

Settlement Method Election:

Physical Settlement, Cash Settlement, or Net Share Settlement, at the election of Counterparty as set forth in a Settlement Notice that satisfies the Settlement Notice Requirements; *provided* that Physical Settlement shall apply (i) if no Settlement Method is validly selected, (ii) with respect to any Settlement Shares in respect of which Dealer is unable, in good faith and in its commercially reasonable discretion, to unwind its hedge by the end of the Unwind Period (taking into account any Transactions with overlapping “Unwind Periods” (as defined in the applicable Confirmation)) (A) in a manner that, in the reasonable discretion of Dealer, based on the advice of counsel, is consistent with the requirements for qualifying for the safe harbor provided by Rule 10b-18 (“**Rule 10b-18**”) under the Exchange Act or (B) in its commercially reasonable judgment, due to the occurrence of five or more Disrupted Days or to the lack of sufficient liquidity in the Shares on any Exchange Business Day during the Unwind Period, (iii) to any Termination Settlement Date (as defined below) and (iv) if the Final Date is a Settlement Date other than as the result of a valid Settlement Notice, in respect of such Settlement Date; *provided, further*, that, if Physical Settlement applies under clause (ii) immediately above, Dealer shall provide written notice to Counterparty at least one Scheduled Trading Day prior to the applicable Settlement Date.

Settlement Notice Requirements:

Notwithstanding any other provision hereof, a Settlement Notice delivered by Counterparty that specifies Cash Settlement or Net Share Settlement will not be effective to establish a Settlement Date or require Cash Settlement or Net Share Settlement unless Counterparty delivers to Dealer with such Settlement Notice a representation, dated as of the date of such Settlement Notice and signed by Counterparty, containing the provisions set forth in clause (i) under the heading “Additional Representations and Agreements of Counterparty” in Paragraph 7(e).

Physical Settlement:

If Physical Settlement is applicable, then Counterparty shall deliver to Dealer through the Clearance System a number of Shares equal to the Settlement Shares for such Settlement Date, and Dealer shall pay to Counterparty, by wire transfer of immediately available funds to an account designated by Counterparty, an amount equal to the Physical Settlement Amount for such Settlement Date, on a delivery versus payment basis. If, on any Settlement Date, the Shares to be delivered by Counterparty to Dealer hereunder are not so delivered (the “**Deferred Shares**”), and a Forward Price Reduction Date occurs during the period from, and including, such Settlement Date to, but excluding, the date such Shares are actually delivered to Dealer, then the portion of the Physical Settlement Amount payable by Dealer to Counterparty in respect of the Deferred Shares shall be reduced by an amount equal to the Forward Price Reduction Amount for such Forward Price Reduction Date, multiplied by the number of Deferred Shares.

Physical Settlement Amount:

For any Settlement Date for which Physical Settlement is applicable, an amount in cash equal to the product of (a) the Forward Price in effect on the relevant Settlement Date multiplied by (b) the Settlement Shares for such Settlement Date.

Cash Settlement:

On any Settlement Date in respect of which Cash Settlement applies, if the Cash Settlement Amount is a positive number, then Dealer will pay the Cash Settlement Amount to Counterparty. If the Cash Settlement Amount is a negative number, then Counterparty will pay the absolute value of the Cash Settlement Amount to Dealer. Such amounts shall be paid on such Settlement Date by wire transfer of immediately available funds.

Cash Settlement Amount:

An amount determined by the Calculation Agent equal to:

- (a) (i)(A) the weighted average (weighted on the same basis as clause (B)) of the Forward Prices on each day during the applicable Unwind Period (calculated assuming no reduction to the Forward Price for any Forward Price Reduction Date that occurs during such Unwind Period, which is accounted for in clause (b) below), minus USD 0.02, minus (B) the weighted average price (the “*Unwind Purchase Price*”) at which Dealer purchases Shares during the Unwind Period to unwind its hedge with respect to the portion of the Number of Shares to be settled during the Unwind Period (including, for the avoidance of doubt, purchases on any Disrupted Day in part), taking into account Shares anticipated to be delivered or received if Net Share Settlement applies, and the restrictions of Rule 10b-18 agreed to hereunder, multiplied by (ii) the Settlement Shares for the relevant Settlement Date; minus
- (b) the product of (i) the Forward Price Reduction Amount for any Forward Price Reduction Date that occurs during such Unwind Period and (ii) the number of Settlement Shares for such Settlement Date with respect to which Dealer has not unwound its hedge, including the settlement of such unwinds, as of such Forward Price Reduction Date.

Net Share Settlement:

On any Settlement Date in respect of which Net Share Settlement applies, if the Cash Settlement Amount is a (i) positive number, Dealer shall deliver a number of Shares to Counterparty equal to the Net Share Settlement Shares, or (ii) negative number, Counterparty shall deliver a number of Shares to Dealer equal to the Net Share Settlement Shares; *provided* that, if Dealer determines in its reasonable judgment that it would be required to deliver Net Share Settlement Shares to Counterparty, Dealer may elect to deliver a portion of such Net Share Settlement Shares on one or more dates prior to the applicable Settlement Date.

Net Share Settlement Shares:	With respect to a Settlement Date, the absolute value of the Cash Settlement Amount <u>divided by</u> the Unwind Purchase Price, with the number of Shares rounded up in the event such calculation results in a fractional number.
Unwind Period:	The period from and including the first Exchange Business Day following the date Counterparty validly elects Cash Settlement or Net Share Settlement in respect of a Settlement Date through the Scheduled Trading Day immediately preceding such Settlement Date, subject to “Termination Settlement” as described in Paragraph 7(g).
Failure to Deliver:	Applicable if Dealer is required to deliver Shares hereunder; otherwise, Not Applicable.
Share Cap:	Notwithstanding any other provision of a Confirmation, in no event will Counterparty be required to deliver to Dealer on any Settlement Date, whether pursuant to Physical Settlement, Net Share Settlement or any Private Placement Settlement, a number of Shares in excess of one point five times (i) the Initial Number of Shares, subject to adjustment from time to time in accordance with the provisions of such Confirmation or the Equity Definitions <u>minus</u> (ii) the aggregate number of Shares delivered by Counterparty to Dealer hereunder prior to such Settlement Date.
Adjustments:	
Hedging Party:	Dealer for all applicable Additional Disruption Events.
Method of Adjustment:	Calculation Agent Adjustment. Section 11.2(e) of the Equity Definitions is hereby amended by deleting clauses (iii) and (v) thereof. For the avoidance of doubt, the declaration or payment of a cash dividend will not constitute a Potential Adjustment Event.
Additional Adjustment:	If, in Dealer’s commercially reasonable judgment, the actual cost to Dealer (or its affiliate), over any 10 consecutive Scheduled Trading Day period, of borrowing a number of Shares equal to the Number of Shares to hedge in a commercially reasonable manner its exposure to the applicable Transaction exceeds a weighted average rate equal to the “ <i>Borrow Cost Threshold</i> ” as specified in the Supplemental Confirmation, the Calculation Agent shall reduce the Forward Price to compensate Dealer for the amount by which such cost exceeded a weighted average rate equal to the Borrow Cost Threshold during such period. The Calculation Agent shall notify Counterparty prior to making any such adjustment to the Forward Price.
Extraordinary Events:	In lieu of the applicable provisions contained in Article 12 of the Equity Definitions, the consequences of any Extraordinary Event (including, for the avoidance of doubt, any Merger Event, Tender Offer, Nationalization, Insolvency, Delisting, or Change In Law) shall be as specified below under the headings “Acceleration Events” and “Termination Settlement” in Paragraphs 7(f) and 7(g), respectively. Notwithstanding anything to the contrary herein or in the Equity Definitions, no Additional Disruption Event will be applicable except to the extent expressly referenced in Paragraph 7(f)(iv). The definition of “Tender Offer” in Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “15%.”

Non-Reliance: Applicable

Agreements and Acknowledgments:

Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

Transfer: Notwithstanding anything to the contrary herein or in the Agreement, Dealer may assign, transfer and set over all rights, title and interest, powers, privileges, obligations and remedies of Dealer under any Transaction, in whole or in part, to (A) a wholly-owned subsidiary of Dealer [or Dealer Parent], whose obligations hereunder are fully and unconditionally guaranteed by Dealer [or Dealer Parent], without the consent of Counterparty, (B) any other wholly-owned direct or indirect subsidiary of Dealer [or Dealer Parent] with a long-term issuer rating equal to or better than the credit rating of Dealer [or Dealer Parent] at the time of transfer without the consent of Counterparty, (C) an affiliate of Dealer [or Dealer Parent] that is also its related Manager (as such term is defined in the Equity Distribution Agreement), without the consent of Counterparty, or (D) any other affiliate of Dealer [or Dealer Parent], with the consent of Counterparty; *provided* that, at all times, Dealer or any assignee, transferee or other recipient of rights, title and interest, powers, privileges, obligations and remedies shall be eligible to provide a U.S. Internal Revenue Service Form W-9 or W-8ECI, or any successor thereto, with respect to any payments or deliveries under the Agreement.

3. Calculation Agent: Dealer whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner; *provided* that, following the occurrence and during the continuance of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder or to perform any obligation of the Calculation Agent hereunder and such failure continues for five Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default, as the Calculation Agent. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent shall promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary or confidential models or other proprietary or confidential information used by it for such determination or calculation or other information that the Calculation Agent determines in good faith is or is likely to be subject to contractual, legal or regulatory obligations.

4. Account Details:

- | | |
|---|---|
| (a) Account for delivery of Shares to Dealer: | To be furnished |
| (b) Account for delivery of Shares to Counterparty: | To be furnished |
| (c) Account for payments to Counterparty: | To be advised under separate cover or telephone confirmed prior to each Settlement Date |
| (d) Account for payments to Dealer: | To be advised under separate cover or telephone confirmed prior to each Settlement Date |

5. Offices:

The Office of Counterparty for each Transaction is: Inapplicable, Counterparty is not a Multibranch Party

The Office of Dealer for each Transaction is: [*].

6. Notices: For purposes of each Confirmation:

- (a) Address for notices or communications to Counterparty:

California Water Service Group
1720 North First Street
San Jose, California 95112
E-mail [*]
Attention: [*]

(b) Address for notices or communications to Dealer:

[INSERT DEALER NAME AND NOTICE INFORMATION]

7. Other Provisions:

(a) Conditions to Effectiveness. Each Transaction shall be effective if and only if Shares are sold by the Agent on or after the applicable Trade Date and on or before the applicable Hedge Completion Date pursuant to the Equity Distribution Agreement. If the Equity Distribution Agreement is terminated prior to any such sale of Shares thereunder, the parties shall have no further obligations in connection with such Transaction, other than in respect of breaches of representations or covenants on or prior to such date. For the avoidance of doubt, if the Equity Distribution Agreement is terminated prior to the Hedge Completion Date, such Transaction shall remain effective with respect to any Shares that had been sold by the Agent on or after such Trade Date and prior to such termination.

(b) Equity Distribution Agreement Representations, Warranties and Covenants. On the date hereof, each Trade Date and each date on which Dealer or its affiliates makes a sale pursuant to a prospectus in connection with a hedge of the related Transaction, Counterparty repeats and reaffirms as of such date all of the representations and warranties contained in the Equity Distribution Agreement. Counterparty hereby agrees to comply with its covenants contained in the Equity Distribution Agreement as if such covenants were made in favor of Dealer.

(c) Interpretive Letter. Counterparty agrees and acknowledges that each Transaction is being entered into in accordance with the October 9, 2003 interpretive letter from the staff of the Securities and Exchange Commission to Goldman, Sachs & Co. (the “*Interpretive Letter*”) and agrees to take all actions, and to omit to take any actions, reasonably requested by Dealer for each Transaction to comply with the Interpretive Letter. Without limiting the foregoing, Counterparty agrees that neither it nor any “affiliated purchaser” (as defined in Regulation M (“*Regulation M*”) under the Exchange Act) will, directly or indirectly, bid for, purchase or attempt to induce any person to bid for or purchase, the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares during any “restricted period” as such term is defined in Regulation M. In addition, Counterparty represents that it is eligible to conduct a primary offering of Shares on Form S-3, the offering contemplated by the Equity Distribution Agreement complies with Rule 415 under the Securities Act, and the Shares are “actively traded” as defined in Rule 101(c)(1) of Regulation M.

(d) Agreements and Acknowledgments Regarding Shares.

(i) Counterparty agrees and acknowledges that, in respect of any Shares delivered to Dealer hereunder, such Shares shall be newly issued (unless mutually agreed otherwise by the parties) and, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance and not subject to any preemptive or similar rights and shall, upon such issuance, be accepted for listing or quotation on the Exchange.

(ii) Counterparty agrees and acknowledges that Dealer (or its affiliate) will hedge its exposure to each Transaction by selling Shares borrowed from third party securities lenders or other Shares pursuant to a registration statement, and that, pursuant to the terms of the Interpretive Letter, the Shares (up to the Initial Number of Shares) delivered, pledged or loaned by Counterparty to Dealer (or its affiliate) in connection with such Transaction may be used by Dealer (or its affiliate) to return to securities lenders without further registration or other restrictions under the Securities Act, in the hands of those securities lenders, irrespective of whether such securities loan is effected by Dealer (or its affiliate). Accordingly, subject to Paragraph 7(h), Counterparty agrees that the Shares that it delivers, pledges or loans to Dealer (or its affiliate) on or prior to the final Settlement Date will not bear a restrictive legend and that such Shares will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System.

(iii) Counterparty agrees and acknowledges that it has reserved and will keep available at all times, free from preemptive or similar rights and free from any lien, charge, claim or other encumbrance, authorized but unissued Shares at least equal to the Share Cap, solely for the purpose of settlement under each Transaction.

(iv) Unless the provisions set forth under “Private Placement Procedures” are applicable, Dealer agrees to use any Shares delivered by Counterparty hereunder on any Settlement Date to return to securities lenders to close out open securities loans created by Dealer or an affiliate of Dealer in the course of Dealer’s or such affiliate’s hedging activities related to Dealer’s exposure under the applicable Transaction.

(v) In connection with bids and purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction, Dealer shall use its good faith efforts to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18, as if such provisions were applicable to such purchases and any analogous purchases under any Transaction, taking into account any applicable Securities and Exchange Commission no action letters, as appropriate, and subject to any delays between the execution and reporting of a trade of the Shares on the Exchange and other circumstances beyond Dealer’s control.

(e) Additional Representations and Agreements of Counterparty. As of the date hereof, each Trade Date and any other date specified below, Counterparty represents, warrants and agrees as follows:

(i) Counterparty represents to Dealer on each Trade Date and on any date that Counterparty notifies Dealer that Cash Settlement or Net Share Settlement applies to the related Transaction, that (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares, (B) each of its filings under the Securities Act, the Exchange Act or other applicable securities laws that are required to be filed have been filed and that, as of the date of this representation, when considered as a whole (with the more recent such filings deemed to amend inconsistent statements contained in any earlier such filings), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and (C) Counterparty is neither entering into the relevant Confirmation nor making any election hereunder to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act. In addition to any other requirement set forth herein, Counterparty agrees not to designate, or to appropriately rescind or modify a prior designation of, any Settlement Date if it is notified by Dealer that, in the reasonable determination of Dealer, based on advice of counsel, such settlement or Dealer’s related market activity in respect of such date would result in a violation of any applicable federal or state law or regulation, including the U.S. federal securities laws.

(ii) It is the intent of Dealer and Counterparty that following any election of Cash Settlement or Net Share Settlement by Counterparty, the purchase of Shares by Dealer during any Unwind Period shall comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act and that each Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c) under the Exchange Act. Counterparty acknowledges that (i) during any Unwind Period Counterparty shall not have, and shall not attempt to exercise, any influence over how, when or whether to effect purchases of Shares by Dealer (or its agent or affiliate) in connection with each Confirmation and (ii) Counterparty is entering into, and shall act with respect to, each Confirmation and the Agreement in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 under the Exchange Act. Counterparty further agrees to act in good faith with respect to each Confirmation and the Agreement.

(iii) Counterparty shall, at least one day prior to the first day of any Unwind Period, notify Dealer of the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Counterparty or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Unwind Period and during the calendar week in which the first day of the Unwind Period occurs (“**Rule 10b-18 purchase**”, “**blocks**” and “**affiliated purchaser**” each being used as defined in Rule 10b-18).

(iv) During any Unwind Period, Counterparty shall (i) notify Dealer prior to the opening of trading in the Shares on any day on which Counterparty makes, or reasonably expects in advance of the opening to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to Counterparty (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), (ii) promptly notify Dealer following any such announcement that such announcement has been made, and (iii) promptly deliver to Dealer following the making of any such announcement information indicating (A) Counterparty’s average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Counterparty’s block purchases (as defined in Rule 10b-18) effected pursuant to Rule 10b-18(b)(4) during the three full calendar months preceding the date of the announcement of such transaction. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders.

(v) Neither Counterparty nor any of its affiliated purchasers (within the meaning of Rule 10b-18) shall take or refrain from taking any action (including, without limitation, any direct purchases by Counterparty or any of its affiliates, or any purchases by a party to a derivative transaction with Counterparty or any of its affiliates), either under any Confirmation, under an agreement with another party or otherwise, that Counterparty reasonably believes to cause any purchases of Shares by Dealer or any of its affiliates in connection with any Cash Settlement or Net Share Settlement of any Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 determined as if all such foregoing purchases were made by Counterparty.

(vi) Counterparty will not engage in any “distribution” (as defined in Regulation M), other than a distribution meeting, in each case, the requirements of an exception set forth in each of Rules 101(b) and 102(b) of Regulation M that would cause a “restricted period” (as defined in Regulation M) to occur during any Unwind Period.

(vii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(viii) Counterparty is not insolvent, nor will Counterparty be rendered insolvent as a result of any Transaction or its performance of the terms hereof.

(ix) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of any Transaction under any accounting standards including ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, or ASC Topic 480, Distinguishing Liabilities from Equity and ASC 815-40, Derivatives and Hedging – Contracts in Entity’s Own Equity (or any successor issue statements) or under FASB’s Liabilities & Equity Project.

(x) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency.

(xi) To Counterparty’s actual knowledge, no federal, state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares, other than Sections 13 and 16 under the Exchange Act; *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or its affiliates solely as a result of their being a financial institution or broker-dealer.

(xii) No filing with, or approval, authorization, consent, license, registration, qualification, order or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the execution, delivery and performance by Counterparty of any Confirmation and the consummation of any Transaction (including, without limitation, the issuance and delivery of Shares on any Settlement Date) except (i) such as have been obtained under the Securities Act and (ii) as may be required to be obtained under state securities laws.

(xiii) Counterparty (i) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into each Transaction; (ii) has consulted with its own legal, financial, accounting and tax advisors in connection with each Transaction; and (iii) is entering into each Transaction for a bona fide business purpose.

(xiv) Counterparty will, by the next succeeding Scheduled Trading Day notify Dealer upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default, a Potential Event of Default or a Potential Adjustment Event; *provided* that such notification shall not include any material non-public information regarding Counterparty.

(xv) Counterparty (i) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (iii) has total assets of at least USD 50 million as of the date hereof and each Trade Date.

(f) Acceleration Events. Each of the following events shall constitute an “**Acceleration Event**”:

(i) Stock Borrow Event. In the commercially reasonable judgment of Dealer (or its affiliate) (A) is not able to hedge in a commercially reasonable manner its exposure under the related Transaction because insufficient Shares are made available for borrowing by securities lenders or (B) would incur a cost to borrow (or to maintain a borrow of) Shares to hedge in a commercially reasonable manner its exposure under such Transaction that is greater than a rate equal to the “**Maximum Borrow Cost**” as specified in the Supplemental Confirmation (each, a “**Stock Borrow Event**”);

(ii) Dividends and Other Distributions. On any day occurring after the Trade Date for each applicable Transaction, Counterparty declares a distribution, issue or dividend to existing holders of the Shares of (A) any cash dividend (other than an Extraordinary Dividend) to the extent all cash dividends having an ex-dividend date during the period from, and including, any Forward Price Reduction Date (with the Trade Date being a Forward Price Reduction Date for purposes of this Paragraph 7(f)(ii) only) to, but excluding, the next subsequent Forward Price Reduction Date exceeds, on a per Share basis, the Forward Price Reduction Amount set forth opposite the first date of any such period in the Supplemental Confirmation, (B) any Extraordinary Dividend, (C) any share capital or other securities of another issuer acquired or owned (directly or indirectly) by Counterparty as a result of a spin-off or other similar transaction or (D) any other type of securities (other than Shares), rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price, as determined in a commercially reasonable manner by Dealer; “**Extraordinary Dividend**” means any dividend or distribution (that is not an ordinary cash dividend) declared by the Issuer with respect to the Shares that, in the commercially reasonable determination of Dealer, is (1) a dividend or distribution declared on the Shares at a time at which the Issuer has not previously declared or paid dividends or distributions on such Shares for the prior four quarterly periods, (2) a payment or distribution by the Issuer to holders of Shares that the Issuer announces will be an “extraordinary” or “special” dividend or distribution, (3) a payment by the Issuer to holders of Shares out of the Issuer’s capital and surplus or (4) any other “special” dividend or distribution on the Shares that is, by its terms or declared intent, outside the normal course of operations or normal dividend policies or practices of the Issuer;

(iii) ISDA Termination. Either Dealer or Counterparty has the right to designate an Early Termination Date pursuant to Section 6 of the Agreement, in which case, except as otherwise specified herein and except as a result of an Event of Default under Section 5(a)(i) of the Agreement, the provisions of Paragraph 7(g) shall apply in lieu of the consequences specified in Section 6 of the Agreement;

(iv) Other ISDA Events. An Announcement Date occurs in respect of any Merger Event, Tender Offer, Nationalization, Insolvency, Delisting or the occurrence of any Hedging Disruption or Change in Law; *provided* that, in case of a Delisting, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); *provided, further*, that (i) the definition of “Change in Law” provided in Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (A) replacing the phrase “the interpretation” in the third line thereof with the phrase “or announcement or statement of the formal or informal interpretation” and (B) immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by Dealer on the Trade Date” and (ii) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (B) the promulgation of or any change in or announcement or statement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Wall Street Transparency and Accountability Act of 2010 (the “*WSTAA*”) or any similar provision in any legislation enacted on or after the Trade Date for each applicable Transaction; or

(v) Ownership Event. In the good faith judgment of Dealer, on any day, the Share Amount for such day exceeds the Post-Effective Limit for such day (if any applies) (each, an “*Ownership Event*”). For purposes of this clause (v), the “*Share Amount*” as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “*Dealer Person*”) under any law, rule, regulation or regulatory order or Counterparty constituent document that for any reason is, or after the Trade Date for each applicable Transaction becomes, applicable to ownership of Shares (“*Applicable Provisions*”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership of under the Applicable Provisions, as determined by Dealer in its reasonable discretion. The “*Post-Effective Limit*” means (x) the minimum number of Shares that would give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date for each applicable Transaction) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or would result in an adverse effect on a Dealer Person, under the Applicable Provisions, as determined by Dealer in its reasonable discretion, minus (y) 1.0% of the number of Shares outstanding.

(g) **Termination Settlement.** Upon the occurrence of any Acceleration Event, Dealer shall have the right to designate, upon at least one Scheduled Trading Day's notice, any Scheduled Trading Day following such occurrence to be a Settlement Date hereunder (a "**Termination Settlement Date**") to which Physical Settlement shall apply, and to select the number of Settlement Shares relating to such Termination Settlement Date; *provided* that (i) in the case of an Acceleration Event arising out of an Ownership Event, the number of Settlement Shares so designated by Dealer shall not exceed the number of Shares necessary to reduce the Share Amount to reasonably below the Post-Effective Limit and (ii) in the case of an Acceleration Event arising out of a Stock Borrow Event, the number of Settlement Shares so designated by Dealer shall not exceed the number of Shares as to which such Stock Borrow Event exists. If, upon designation of a Termination Settlement Date by Dealer pursuant to the preceding sentence, Counterparty fails to deliver the Settlement Shares relating to such Termination Settlement Date when due or otherwise fails to perform obligations within its control in respect of the applicable Transaction, it shall be an Event of Default with respect to Counterparty and Section 6 of the Agreement shall apply. If an Acceleration Event occurs during an Unwind Period relating to a number of Settlement Shares to which Cash Settlement or Net Share Settlement applies, then on the Termination Settlement Date relating to such Acceleration Event, notwithstanding any election to the contrary by Counterparty, Cash Settlement or Net Share Settlement shall apply to the portion of the Settlement Shares relating to such Unwind Period as to which Dealer has unwound its hedge and Physical Settlement shall apply in respect of (x) the remainder (if any) of such Settlement Shares and (y) the Settlement Shares designated by Dealer in respect of such Termination Settlement Date. If an Acceleration Event occurs after Counterparty has designated a Settlement Date to which Physical Settlement applies but before the relevant Settlement Shares have been delivered to Dealer, then Dealer shall have the right to cancel such Settlement Date and designate a Termination Settlement Date in respect of such Shares pursuant to the first sentence hereof. Notwithstanding the foregoing, in the case of a Nationalization or Merger Event, if at the time of the related Relevant Settlement Date the Shares have changed into cash or any other property or the right to receive cash or any other property, the Calculation Agent shall adjust the nature of the Shares as it determines appropriate to account for such change such that the nature of the Shares is consistent with what shareholders receive in such event.

(h) **Private Placement Procedures.** If Counterparty is unable to comply with the provisions of sub-paragraph (ii) of "Agreements and Acknowledgments Regarding Shares" above because of a change in law or a change in the policy of the Securities and Exchange Commission or its staff, or Dealer otherwise determines that in its reasonable opinion any Shares to be delivered to Dealer by Counterparty may not be freely returned by Dealer or its affiliates to securities lenders as described under such sub-paragraph (ii) or otherwise constitute "restricted securities" as defined in Rule 144 under the Securities Act, then delivery of any such Shares (the "**Restricted Shares**") shall be effected as provided below, unless waived by Dealer.

(i) If Counterparty delivers the Restricted Shares pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Counterparty shall be effected in accordance with private placement procedures customary for private placements of equity securities of substantially similar size with respect to such Restricted Shares reasonably acceptable to Dealer; *provided* that Counterparty may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the sale by Counterparty to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer), and if Counterparty fails to deliver the Restricted Shares when due or otherwise fails to perform obligations within its control in respect of a Private Placement Settlement, it shall be an Event of Default with respect to Counterparty and Section 6 of the Agreement shall apply. The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placement agreements of equity securities of a substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall, in its good faith discretion, adjust the amount of Restricted Shares to be delivered to Dealer hereunder in a commercially reasonable manner to reflect the fact that such Restricted Shares may not be freely returned to securities lenders by Dealer and may only be saleable by Dealer at a discount to reflect the lack of liquidity in Restricted Shares. Notwithstanding this Master Confirmation or the Agreement, the date of delivery of such Restricted Shares shall be the Clearance System Business Day following notice by Dealer to Counterparty of the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the date that would otherwise be applicable.

(ii) If Counterparty delivers any Restricted Shares in respect of the applicable Transaction, Counterparty agrees that (A) such Shares may be transferred by and among Dealer and its affiliates and (B) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed, Counterparty shall promptly remove, or cause the transfer agent for the Shares to remove, any legends referring to any transfer restrictions from such Shares upon delivery by Dealer (or such affiliate of Dealer) to Counterparty or such transfer agent of any seller’s and broker’s representation letters customarily delivered by Dealer or its affiliates in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, each without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

(i) Indemnity. Counterparty agrees to indemnify Dealer and its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such affiliate or person being an “*Indemnified Party*”) from and against any and all losses, claims, damages and liabilities, joint and several, incurred by or asserted against such Indemnified Party arising out of, in connection with, or relating to, any breach of any covenant or representation made by Counterparty in the applicable Confirmation or the Agreement and will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees and expenses) as they are incurred in connection with the investigation of, preparation for, or defense of any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto, except to the extent determined in a final and nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer’s gross negligence, fraud, bad faith and/or willful misconduct or from a breach of any representation or covenant of Dealer contained in the applicable Confirmation or the Agreement. The foregoing provisions shall survive any termination or completion of any Transaction.

(j) Waiver of Trial by Jury. COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVE (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTIONS OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(k) Governing Law/Jurisdiction. Each Confirmation and any claim, controversy or dispute arising under or related to such Confirmation shall be governed by the laws of the State of New York without reference to the conflict of laws provisions thereof. The parties hereto irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the United States Court for the Southern District of New York in connection with all matters relating hereto and waive any objection to the laying of venue in, and any claim of inconvenient forum with respect to, these courts.

(l) Designation by Dealer. Notwithstanding any other provision in any Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of the applicable Transactions and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty only to the extent of any such performance.

(m) Insolvency Filing. Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, upon any Insolvency Filing or other proceeding under the Bankruptcy Code in respect of the Issuer, the Transactions shall automatically terminate on the date thereof without further liability of either party to the applicable Confirmations to the other party (except for any liability in respect of any breach of representation or covenant by a party under such Confirmations prior to the date of such Insolvency Filing or other proceeding), it being understood that each Transaction is a contract for the issuance of Shares by the Issuer.

(n) Disclosure. Effective from the date of commencement of discussions concerning any Transaction, Dealer, Counterparty and each of their employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of such Transaction and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure.

(o) Right to Extend. In connection with either Cash Settlement or Net Share Settlement, Dealer may postpone any Settlement Date or any other date of valuation or delivery, with respect to some or all of the relevant Settlement Shares, if Dealer determines, based on the advice of counsel, that such extension is reasonably necessary or appropriate to enable Dealer to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory or self-regulatory requirements or with related policies and procedures applicable to Dealer that generally apply to transactions of a nature and kind similar to such Transaction.

(p) Counterparty Share Repurchases. Counterparty agrees not to repurchase, directly or indirectly, any Shares if, immediately following such purchase, the Outstanding Share Percentage would be equal to or greater than 4.5%. The "***Outstanding Share Percentage***" as of any day is the fraction (1) the numerator of which is the aggregate of the Number of Shares for the related Transaction and the "Number of Shares" (as defined in the applicable Confirmation) under any outstanding Transactions and (2) the denominator of which is the number of Shares outstanding on such day.

(q) **Limit on Beneficial Ownership.** Notwithstanding any other provisions hereof, Dealer shall not have the right to acquire Shares hereunder and Dealer shall not be entitled to take delivery of any Shares hereunder (in each case, whether in connection with the purchase of Shares on any Settlement Date or any Termination Settlement Date, any Private Placement Settlement or otherwise) to the extent (but only to the extent) that, after such receipt of any Shares hereunder, (i) the Share Amount would exceed the Post-Effective Limit, (ii) Dealer and each person subject to aggregation of Shares with Dealer under Section 13 or Section 16 of the Exchange Act and the rules promulgated thereunder (including all persons who may form a “group” within the meaning of Rule 13d-5(b)(1) under the Exchange Act) (collectively, the “**Dealer Group**”) would directly or indirectly beneficially own (as such term is defined for purposes of Section 13 or Section 16 of the Exchange Act and the rules promulgated thereunder) in excess of 4.9% of the then outstanding Shares (the “**Threshold Number of Shares**”) or (iii) Dealer would hold 5% or more of the number of Shares of Counterparty’s outstanding common stock or 5% or more of Counterparty’s outstanding voting power (the “**Exchange Limit**”). Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that, after such delivery, (i) the Share Amount would exceed the Post-Effective Limit, (ii) the Dealer Group would directly or indirectly so beneficially own in excess of the Threshold Number of Shares or (iii) Dealer would directly or indirectly hold in excess of the Exchange Limit. If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of this provision, Counterparty’s obligation to make such delivery shall not be extinguished and Counterparty shall make such delivery as promptly as practicable after, but in no event later than one Scheduled Trading Day after, Dealer gives notice to Counterparty that, after such delivery, (i) the Share Amount would not exceed the Post-Effective Limit, (ii) the Dealer Group would not directly or indirectly so beneficially own in excess of the Threshold Number of Shares or (iii) Dealer would not directly or indirectly hold in excess of the Exchange Limit.

In addition, notwithstanding anything herein to the contrary, if any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of the immediately preceding paragraph, Dealer shall be permitted to make any payment due in respect of such Shares to Counterparty in two or more tranches that correspond in amount to the number of Shares delivered by Counterparty to Dealer pursuant to the immediately preceding paragraph.

(r) **Commodity Exchange Act.** Each of Dealer and Counterparty agrees and represents that (i) it is an “eligible contract participant” as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended (the “**CEA**”) and (ii) each Confirmation and each Transaction are subject to individual negotiation by the parties and have not been executed or traded on a “trading facility” as defined in Section 1a(51) of the CEA.

(s) **Bankruptcy Status.** Subject to Paragraph 7(m), Dealer acknowledges and agrees that this Master Confirmation is not intended to convey to Dealer rights with respect to the transactions contemplated hereby that are senior to the claims of Counterparty’s common stockholders in any U.S. bankruptcy proceedings of Counterparty; *provided, however*, that nothing herein shall be deemed to limit Dealer’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the applicable Confirmation and the Agreement; and *provided, further*, that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transaction other than the applicable Transactions.

(t) **No Collateral or Setoff.** Notwithstanding Section 6(f) or any other provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. No other obligations of the parties shall be set off against obligations in respect of the Transactions, whether arising under this Master Confirmation, a Confirmation, the Agreement and any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, except that set-off solely with respect to amounts payable under the Transactions and any and all Transactions governed by this Master Confirmation and the Agreement shall be permissible.

(u) Tax Matters.

(i) Payer Tax Representations. For the purpose of Section 3(e) of the Agreement, each of Dealer and Counterparty makes the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of the Agreement or amounts payable hereunder that may be treated as interest for U.S. federal income tax purposes) to be made by it to the other party under the Agreement. In making this representation, it may rely on (A) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (B) the satisfaction of the agreement contained in Section 4(a)(i) or Section 4(a)(iii) of the Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or Section 4(a)(iii) of the Agreement and (C) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement, except that it will not be a breach of this representation where reliance is placed on clause (B) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.

(ii) Payee Tax Representations. For the purpose of Section 3(f) of the Agreement:

(1) Dealer makes the following representations:³

a. [•]

(2) Counterparty makes the following representations:

a. [It is a “U.S. person” (as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes. It is a corporation organized and existing under the laws of the State of Delaware and is an exempt recipient within the meaning of section 1.6049-4(c)(1)(ii) of the United States Treasury Regulations.]⁴

(iii) Withholding Tax imposed on payments to non-U.S. counterparties under the United States Foreign Account Tax Compliance Act. “Tax” as used in Paragraph 7(u)(i) and “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any FATCA Withholding Tax. For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**FATCA Withholding Tax**” means any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

³ Each Dealer to provide its reps.

⁴ Company to confirm

(iv) 871(m) Protocol. To the extent that either party to the Agreement with respect to the applicable Transactions is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to this Master Confirmation and the Agreement with respect to such Transactions as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to this Master Confirmation and the Agreement with respect to such Transactions, references to “each Covered Master Agreement” in the 871(m) Protocol will be deemed to be references to this Master Confirmation and the Agreement with respect to such Transactions, and references to the “Implementation Date” in the 871(m) Protocol will be deemed to be references to the Trade Date of the applicable Transaction. For greater certainty, if there is any inconsistency between this provision and the provisions contained in any other agreement between the parties with respect to such Transactions, this provision shall prevail unless such other agreement expressly overrides the provisions of the Attachment to the 871(m) Protocol.

(v) Tax Documentation. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Counterparty shall provide to Dealer a valid and duly executed U.S. Internal Revenue Service Form W-9, or any successor thereto, that eliminates U.S. federal backup withholding tax on payments to Counterparty under this Master Confirmation with the “C Corporation” box checked on line 3 thereof. Such form shall be completed accurately and in a manner reasonably acceptable to the Dealer and shall be delivered (i) on or before the date of execution of this Master Confirmation; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such tax form previously provided by Counterparty has become inaccurate or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents (to the extent it is so entitled to provide legally and without undue burden) reasonably requested by Dealer to allow Dealer to make a payment under the applicable Confirmation without any deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate.

For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Dealer shall provide to Counterparty a valid and duly executed U.S. Internal Revenue Service Form [W-9]⁵[W-8ECI]⁶, or any successor thereto. Such form shall be completed accurately and in a manner reasonably acceptable to the Counterparty and shall be delivered (i) on or before the date of execution of this Master Confirmation; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such tax form previously provided by Dealer has become inaccurate or incorrect. Additionally, Dealer shall, promptly upon request by Counterparty, provide such other tax forms and documents (to the extent it is so entitled to provide legally and without undue burden) reasonably requested by Counterparty to allow Counterparty to make a payment under the applicable Confirmation without any deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate.

⁵ Dealer to confirm.

⁶ Dealer to confirm.

(vi) Deduction or Withholding for Tax. Sections 2(d)(i), 2(d)(i)(4), 2(d)(ii)(1) of the Agreement and the definition of “Tax” are hereby amended by replacing the words “pay”, “paid”, “payment” or “payments” with the words “pay or deliver”, “paid or delivered”, “payment or delivery” or “payments or deliveries”, respectively.

(vii) Change of Account. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word “change” in the fourth line thereof: “; provided that if any new account of one party is not in the same tax jurisdiction as the original account, the other party shall not be obliged to pay, for tax reasons, any greater amount under this Master Confirmation and shall not be obliged to accept any lesser amount under this Master Confirmation as a result of such change than would have been the case if such change had not taken place.”

(v) Wall Street Transparency and Accountability Act of 2010. The parties hereby agree that none of (i) Section 739 of the WSTAA, (ii) any similar legal certainty provision included in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date for each applicable Transaction, (iii) the enactment of the WSTAA or any regulation under the WSTAA, (iv) any requirement under the WSTAA or (v) any amendment made by the WSTAA shall limit or otherwise impair either party’s right to terminate, renegotiate, modify, amend or supplement the applicable Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased cost, regulatory change or similar event under such Confirmation, the Equity Definitions or the Agreement (including, but not limited to, any right arising from any Acceleration Event).

(w) Other Forwards / Dealers. Dealer acknowledges that Counterparty has entered or may enter in the future into one or more substantially similar forward transactions for the Shares (each, an “**Other Forward**” and collectively, the “**Other Forwards**”) with one or more dealers (each, an “**Other Dealer**” and collectively, the “**Other Dealers**”). Dealer and Counterparty agree that if Counterparty designates a “Settlement Date” with respect to one or more Other Forwards for which “Cash Settlement” or “Net Share Settlement” is applicable, and the resulting “Unwind Period” for such Other Forwards coincides for any period of time with an Unwind Period for any Transaction (the “**Overlap Unwind Period**”), Counterparty shall notify Dealer at least one Scheduled Trading Day prior to the commencement of such Overlap Unwind Period of the first Scheduled Trading Day and length of such Overlap Unwind Period, and Dealer shall be permitted to purchase Shares to unwind its hedge in respect of the applicable Transactions only on alternating Scheduled Trading Days during such Overlap Unwind Period, commencing on the first, second, third or later Scheduled Trading Day of such Overlap Unwind Period, as notified to Dealer by Counterparty at least one Scheduled Trading Day prior to such Overlap Unwind Period (which alternating Scheduled Trading Days, for the avoidance of doubt, may be every other Scheduled Trading Day if there is only one Other Dealer, every third Scheduled Trading Day if there are two Other Dealers, etc.).

(x) Delivery of Cash. For the avoidance of doubt, nothing in any Confirmation shall be interpreted as requiring Counterparty to deliver cash in respect of the settlement of the related Transaction, except in circumstances where the required cash settlement thereof is permitted for classification of the contract as equity by ASC 815-40 (formerly EITF 00-19) as in effect on the Trade Date for such Transaction (including, without limitation, where Counterparty so elects to deliver cash or fails timely to elect to deliver Shares in respect of such settlement). For the avoidance of doubt, the preceding sentence shall not be construed as limiting (i) Paragraph 7(i) or (ii) any damages that may be payable by Counterparty as a result of breach of such Confirmation.

(y) Counterparts.

(i) Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., DocuSign and AdobeSign (any such signature, an “**Electronic Signature**”)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. The words “execution,” “signed,” “signature” and words of like import in this Master Confirmation or in any other certificate, agreement or document related to this Master Confirmation shall include any Electronic Signature, except to the extent electronic notices are expressly prohibited under this Master Confirmation or the Agreement.

(ii) Notwithstanding anything to the contrary in the Agreement, either party may deliver to the other party a notice relating to any Event of Default or Termination Event under this Master Confirmation by e-mail.

(z) CARES Act. Counterparty represents to Dealer on any date that Counterparty notifies Dealer that Cash Settlement or Net Share Settlement applies to the related Transaction that neither Counterparty nor any of its subsidiaries has applied, and shall not until after the first date on which no portion of such Transaction remains outstanding following any final exercise and settlement, cancellation or early termination of such Transaction, apply for a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”)) or other investment, or receive any financial assistance or relief under any program or facility (collectively “Financial Assistance”) that (I) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (II) (X) requires under other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that Counterparty comply with any requirement not to, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Issuer, and that it has not, as of the date specified in the condition, made a capital distribution or will not make a capital distribution, or (Y) where the terms of such Transaction would cause Counterparty under any circumstance to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance (collectively “**Restricted Financial Assistance**”), other than any such applications for Restricted Financial Assistance that were (or would be) made (x) based on the advice of outside counsel of national standing that the terms of such Transaction would not cause Counterparty to fail to satisfy any condition for application for or receipt or retention of such Financial Assistance based on the terms of the program or facility as of the date of such advice or (y) after delivery to Dealer of evidence or other guidance from a governmental authority with jurisdiction for such program or facility that such Transaction is permitted under such program or facility (either by specific reference to such Transaction or by general reference to transactions with the attributes of such Transaction in all relevant respects).

[[aa)] US Resolution Stay Protocol.

The parties agree that the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”) page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Master Confirmation, and for such purposes this Master Confirmation shall be deemed a “**Covered Agreement**,” Dealer shall be deemed a “**Covered Entity**” and Counterparty shall be deemed a “**Counterparty Entity**” and for the avoidance of doubt shall be the only Counterparty Entity. In the event that, after the date of this Master Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this Paragraph [7(z)]. In the event of any inconsistencies between this Master Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this Paragraph [7(z)] without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this Paragraph [7(z)], references to “this Master Confirmation” include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this Paragraph [7(z)] shall be incorporated into any related covered affiliate credit enhancements, with all references to Dealer replaced by references to the covered affiliate support provider.

“**QFC Stay Rules**” mean the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1– 7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.]⁷

[[bb)]]⁸

⁷ To be included if Dealer so requires.

⁸ Dealer to add any boilerplate.

Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Master Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

[DEALER NAME]

By: _____
Name:
Title:

Confirmed as of the date first above written:

CALIFORNIA WATER SERVICE GROUP

By: _____
Name:
Title:

SUPPLEMENTAL CONFIRMATION⁹

Date: [*], 20[*]

To: California Water Service Group
 1720 North First Street
 San Jose, California 95112
 E-mail: [*]
 Attention: [*]

From: [DEALER NAME AND NOTICE INFORMATION]

Ladies and Gentlemen:

This Supplemental Confirmation is the Supplemental Confirmation contemplated by the Master Confirmation for Share Forward Transactions dated as of [*], 20[*] (the “**Master Confirmation**”) between California Water Service Group and [DEALER NAME]. The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between Counterparty and Dealer as of the Trade Date for the Transaction referenced below. This Supplemental Confirmation supplements, forms part of and is subject to the Master Confirmation.

Terms not defined herein shall have the meaning ascribed to them in the Master Confirmation. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified herein.

The terms of the Transaction to which this Supplemental Confirmation relates and for all purposes under the Confirmation:

- (a) The Trade Date is [*], 20[*];
- (b) The Number of Shares [shall be as set forth in the Pricing Notification, to be the aggregate number of Shares sold through the Agent pursuant to the Equity Distribution Agreement during the period from and including the Trade Date through and including the Hedge Completion Date]¹⁰ [is [*]]¹¹ ; *provided, however*, that on each Settlement Date, the Number of Shares shall be reduced by the number of Settlement Shares settled on such date;
- (c) The Minimum Number of Settlement Shares is [*];
- (d) The Hedge Completion Date [shall be a date that is on or before [*], 20[*]]¹² [is [*], 20[*]]¹³;

⁹ NTD: Company to confirm Master/Supplement structure.

¹⁰ NTD: Insert if not using upfront block pricing.

¹¹ NTD: Insert if using upfront block pricing.

¹² NTD: Insert only if not using upfront block pricing.

¹³ NTD: To be the trade date if using upfront block pricing.

- (e) The Initial Forward Price [shall be an amount in USD as set forth in the Pricing Notification, to be [%] of the volume weighted average price at which the Shares are sold through the Agent pursuant to the Equity Distribution Agreement during the period from and including the Trade Date through and including the Hedge Completion Date, adjusted as the Calculation Agent determines appropriate to (i) reflect on each relevant day the sum of 1 and the Daily Rate for such day multiplied by the then-Initial Forward Price as of such day (which, for the avoidance of doubt, may be based on sales of Forward Hedge Shares that have settled) and (ii) reduce the then-Initial Forward Price by the relevant Forward Price Reduction Amount on each Forward Price Reduction Date occurring on or before the Hedge Completion Date]¹⁴[is USD [%]].¹⁵
- (f) The Final Date is [%], 20[%];
- (g) The Spread is [%] basis points per annum;
- (h) The Forward Price Reduction Dates and the Forward Price Reduction Amounts are as follows:

Forward Price Reduction Date	Forward Price Reduction Amount
Trade Date	USD 0
[%], 20[%]	USD [%]
[%], 20[%]	USD [%]
[%], 20[%]	USD [%]
[%], 20[%]	USD [%]
[%], 20[%]	USD [%]
[%], 20[%]	USD [%]

- (h) The Borrow Cost Threshold is [%] basis points per annum;
- (i) The Notice Period is [%] Scheduled Trading Days;
- (j) The Maximum Borrow Cost is [%] basis points per annum; and
- [(j) There shall not be a Pricing Notification for the Transaction.]¹⁶

[Signature Pages Follow]

¹⁴ NTD: Insert if not using upfront block pricing.

¹⁵ NTD: If using upfront block pricing, then specify Initial Forward Price here.

¹⁶ NTD: Insert if using upfront block pricing.

Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Supplemental Confirmation for that purpose and returning it to us.

Yours sincerely,

[DEALER NAME]

By: _____
Name:
Title:

Confirmed as of the date first above written:

CALIFORNIA WATER SERVICE GROUP

By: _____
Name:
Title:

PRICING NOTIFICATION

Date: [*], 20[*]

To: California Water Service Group
1720 North First Street
San Jose, California 95112
E-mail: [*]
Attention: [*]

From: [DEALER NAME AND NOTICE INFORMATION]

Ladies and Gentlemen:

This Pricing Notification is the Pricing Notification contemplated by the Master Confirmation for Share Forward Transactions dated as of [*], 20[*] (the “**Master Confirmation**”), as supplemented by the Supplemental Confirmation dated as of [*], 20[*] (the “**Supplemental Confirmation**,” and together with the Master Confirmation, the “**Confirmation**”), each between California Water Service Group and [DEALER NAME].

Terms not defined herein shall have the meaning ascribed to them in the Confirmation.

For all purposes under the Confirmation,

- (a) the Hedge Completion Date is [*], 20[*];
- (b) the Number of Shares is [*], subject to further adjustment in accordance with the terms of the Confirmation; and
- (c) the Initial Forward Price is USD [*].

[Signature Pages Follow]

[Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Pricing Notification for that purpose and returning it to us.]¹⁷

Yours sincerely,
[DEALER NAME]

By: _____
Name:
Title:

¹⁷ To be included if dealer so requires.

[Confirmed as of the date first above written:

CALIFORNIA WATER SERVICE GROUP

By: _____
Name:
Title:]¹⁸

¹⁸ To be included if dealer so requires.



May 14, 2025

California Water Service Group
1720 North First Street
San Jose, CA 95112

Re: California Water Service Group Registration Statement on Form S 3

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-3, File No. 333-287273, as amended (the "Registration Statement"), of California Water Service Group, a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), and the prospectus supplement thereto, dated May 14, 2025 (the "Prospectus Supplement"), in connection with the offering by the Company of up to \$350,000,000 shares (the "Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock").

In arriving at the opinion expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of specimen Common Stock certificates and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render the opinion set forth below. In our examination, we have assumed without independent investigation the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that the Shares, when issued against payment therefor as set forth in the Registration Statement and the Prospectus Supplement, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the Prospectus Supplement. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

Gibson, Dunn & Crutcher LLP
One Embarcadero Center Suite 2600 | San Francisco, CA 94111-3715 | T: 415.393.8200 | F: 415.393.8306 | gibsondunn.com
