

**Columbia Gas of Kentucky, Inc.**  
**Case No. 2021-00183**  
**Standard Filing Requirements**  
**5/28/2021**  
**Volume 7 of 9**

<b>Tab</b>	<b>Filing Requirement</b>	<b>Description</b>	<b>Responsible Witness(es)</b>
62	807 KAR 5:001 Section 16-(7)(p)	SEC Reports (10-Ks, 8-Ks, 10-Qs) (8-Ks- From May 5, 2021 through August 26, 2020)	Jeffery T. Gore

**Columbia Gas of Kentucky, Inc.**  
**CASE NO. 2021-00183**  
**Forecasted Test Period Filing Requirements**  
**807 KAR 5:001 Section 16-(7)(p)**

**Description of Filing Requirement:**

A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

**Response:**

Please see attached for Columbia's application for Form 10-Q's and Form 8-K's. Form 10-K is part of the Annual Report to Stockholders and is included with Filing Requirement 16-(7)(l) located at Tab 58.

**Responsible Witness:**

Jeffery T. Gore

FORM 8-K

MAY 5, 2021

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 5, 2021

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

DE

(State or other jurisdiction  
of incorporation or organization)

001-16189

Commission  
file number

35-2108964

(I.R.S. Employer  
Identification No.)

801 East 86th Avenue  
Merrillville, IN

(Address of principal executive offices)

46410

(Zip Code)

Registrant's telephone number, including area code **(877) 647-5990**

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 Stock, par value \$0.01 per share	NI	NYSE
Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B		
Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE
Series A Corporate Units	NIMC	NYSE

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

Emerging growth company

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

ITEM 2.02.            RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On May 5, 2021, NiSource Inc. (the “Company”) reported its financial results for the year ended March 31, 2021. The Company’s press release, dated May 5, 2021, is attached as Exhibit 99.1.

ITEM 9.01.            FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	<a href="#">Press Release, dated May 5, 2021, issued by NiSource Inc.</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Schema Document
101.CAL	Inline XBRL Calculation Linkbase Document
101.LAB	Inline XBRL Labels Linkbase Document
101.PRE	Inline XBRL Presentation Linkbase Document
101.DEF	Inline XBRL Definition Linkbase Document
104	Cover page Interactive Data File (formatted as inline XBRL, and contained in Exhibit 101.)

SIGNATURES

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

NiSource Inc.

\_\_\_\_\_  
(Registrant)

Date: May 5, 2021

By:

\_\_\_\_\_  
/s/ Gunnar J. Gode

Gunnar J. Gode

Vice President, Chief Accounting Officer and Controller  
(Principal Accounting Officer)

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EXHIBIT INDEX

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NEWS

NiSource®

FOR IMMEDIATE RELEASE

WWW.NISOURCE.COM

May 5, 2021

## FOR ADDITIONAL INFORMATION

### Media

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Corporate Media Relations  
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### Investors

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## NiSource Reports First Quarter 2021 Results

- Safety & asset modernization, renewable generation transition, customer affordability remain top priorities
- Equity unit issuance significantly de-risked financing strategy
- Renewable generation advances with investments now totaling ~\$2.0B
- Narrowed 2021 guidance (diluted NOEPS) to the upper half of the previous range and reaffirmed all other near- and long-term growth rates outlined at Investor Day

**MERRILLVILLE, Ind.** - NiSource Inc. (NYSE: NI) today announced, on a GAAP basis, net income available to common shareholders for the three months ended March 31, 2021 of \$281.7 million, or \$0.72 diluted earnings per share, compared to net income available to common shareholders of \$61.8 million, or \$0.16 diluted earnings per share, for the same period of 2020.

NiSource also reported non-GAAP net operating earnings available to common shareholders of \$304.8 million, or \$0.77 diluted earnings per share, for the three months ended March 31, 2021, compared to non-GAAP net operating earnings available to common shareholders of \$290.9 million, or \$0.76 diluted earnings per share, for the same period of 2020. Schedule 1 of this press release contains a complete reconciliation of GAAP measures to non-GAAP measures.

"With the successful completion of last month's convertible issuance, NiSource is well positioned to execute the next stage of our growth plan, driven by safety and asset modernization programs, as well as our electric generation transition strategy," said NiSource President and CEO **Joe Hamrock**. "In Indiana, we kicked off our 2021 Integrated Resource Plan (IRP) process, which will inform our strategy beyond 2023, and we initiated four new renewable energy projects in 2021. We continue to expect that our infrastructure and generation investments will drive compound annual growth of 7 to 9% in diluted net operating earnings per share from 2021 through 2024 while reducing greenhouse gas emissions 90% by 2030."

### **2021 and Long-Term Financial Commitments Reaffirmed**

NiSource is narrowing its 2021 non-GAAP diluted net operating earnings guidance to \$1.32 to \$1.36 per share, which represents the upper half of the previous range. The company expects to make capital investments of \$1.9 billion to \$2.1 billion in 2021.



As outlined at its 2020 Investor Day, NiSource continues to expect to grow its diluted net operating earnings per share by 7 to 9% on a compound annual growth rate basis from 2021 through 2024, including near-term annual growth of 5 to 7% through 2023.

NiSource expects to make capital investments totaling approximately \$10 billion through 2024, comprised of annual investments of \$1.9 to \$2.2 billion for growth, safety, and modernization, and an additional \$2 billion in total for renewable generation. These investments are expected to drive compound annual rate base growth of 10 to 12% for each of our businesses through 2024.

NiSource remains committed to maintaining its current investment-grade credit ratings. The company has investment-grade ratings with Fitch Ratings (BBB), Moody's (Baa2) and Standard & Poor's (BBB+). As of March 31, 2021, NiSource had approximately \$1.9 billion in net available liquidity, consisting of cash and available capacity under its credit facility and accounts receivable securitization programs.

NiSource reminds investors that it does not provide a GAAP equivalent of its earnings guidance due to the impact of unpredictable factors such as fluctuations in weather, material asset sales and impairments, and other unusual and infrequent items included in GAAP results.

### **System-wide Safety Enhancements Update**

The Safety Management System (SMS) is an established operating model within NiSource. Safety milestones in the first quarter of 2021 include:

- Continued advancement of our SMS withing both electric and gas segments
- Commencement of third party SMS validation for accreditation in 2022
- Enhancements to Quality Management System, including expanded field quality auditing capabilities and monthly critical process reviews to drive continuous safety performance improvement
- Achieving Gold Shovel Standard (GSS) Certification, and all contractors performing gas excavation work for any NiSource company are required to comply with GSS standards

"Advances in SMS in the first quarter demonstrate our commitment to strengthening our culture of accountability, where any employee can identify and report risk, including the authority to stop work whenever necessary. We are enhancing process safety with layers of protection and accountability for effective asset management to reduce risk," Hamrock said.

### **First Quarter 2021 and Recent Business Highlights**

#### **Electric Operations**

Northern Indiana Public Service Company (NIPSCO) continues to execute on an electric generation transition consistent with the preferred pathway from its 2018 Integrated Resource Plan (IRP). The 2018 IRP outlines plans to retire nearly 80% of its remaining coal-fired generation by 2023, and retire all coal generation by the end of 2028, to be replaced by lower-cost, reliable and cleaner options. The plan is expected to be a key element of a 90% reduction in NiSource's greenhouse gas emissions by 2030 compared with 2005 levels, and to save NIPSCO electric customers more than \$4 billion over 30 years.

NIPSCO has executed agreements representing approximately \$2.0 billion of renewable generation investments. The projects these agreements support represent NIPSCO's investment interest in the replacement capacity, which equates to approximately half of the total capacity needed. The remaining new capacity is in the form of power purchase agreements (PPAs). The planned retirement of the Michigan City Generating Station could create additional NIPSCO capital investment opportunities.

Recent electric operations highlights include:

- NIPSCO kicked off its 2021 Integrated Resource Plan process in March, which includes the public stakeholder meetings that will be conducted over the course of the year with the IRP report submitted to the Indiana Utility Regulatory Commission (IURC) by November 2021.
- NIPSCO and EDP Renewables recently announced a build transfer agreement (BTA) and a long-term power purchase agreement (PPA) for two renewable energy projects in Indiana, respectively, **Indiana Crossroads Solar Park**, which is anticipated to become operational in 2022, and **Indiana Crossroads II**, a wind project expected to become operational in 2023.
- NIPSCO and Invenergy announced a build transfer agreement to bring 250 megawatts of solar energy to Indiana with the **Fairbanks Solar** project, which is expected to begin commercial operations in fall 2023.
- In addition, NIPSCO and Capital Dynamics signed a build transfer agreement for a 200 megawatt Indiana solar energy project, **Elliott Solar**.
- There are now a total of 14 renewable energy projects announced as part of NiSource's customer-centric "Your Energy, Your Future" initiative, which includes the generation transition plan at NIPSCO and likely fills the balance of capacity necessary to replace the retiring units at Schahfer.
- NIPSCO filed its notice to terminate the current Electric **Transmission, Distribution and Storage Improvement Charge (TDSIC)** plan on April 1, and will file a new Electric TDSIC plan on or soon after June 1, 2021. The plan will include long-term investments in modernizing the company's electric infrastructure with some projects that were previously identified in the latest TDSIC plan and newly identified projects aimed at enhancing service and reliability for customers.

### Gas Distribution Operations

- The Pennsylvania Public Utility Commission issued an order in **Columbia Gas of Pennsylvania's** base rate case in February, approving an annual revenue increase of \$63.5 million, to invest in, modernize and upgrade the company's existing natural gas distribution system as well as maintain the continued safety of the system. The Commission also approved an ROE of 9.86%, with rates effective as of January 23, 2021.
- **Columbia Gas of Pennsylvania** also filed its base rate case in March 2021 requesting an annual revenue increase of \$98.3 million to support its ongoing safety and modernization program.
- **Columbia Gas of Ohio** continues to execute on its Infrastructure Replacement Program, a long-term modernization program, with approval of its calendar year 2020 investment on April 21, 2021 providing \$22.2 million in revenue. COH is also seeking to recover costs associated with its Capital Expenditure Program, the capital recovery program for other investments in COH's facilities, and has proposed to recover \$18.3 million in incremental revenue for its calendar year 2020 investment.
- **NIPSCO** continues to execute on its **long-term gas modernization program**, which includes nearly \$950 million in capital investments to be made through 2025 and recovered through semi-annual adjustments to the Gas **Transmission, Distribution and Storage Improvement Charge (TDSIC)** tracker.
- **Columbia Gas of Kentucky** continues its annual investment program for safety modification and replacement of eligible facilities (mains, services, meters and appurtenances). An Order was received on April 30 from the Kentucky Public Service Commission approving \$40 million in construction activity in progress for the calendar year 2021, with \$2.6 million of incremental revenue.
- Continued execution of safety/asset modernization programs.

- NiSource has joined the Low-Carbon Resources Initiative, which is accelerating development and demonstration of low- and zero-carbon energy technologies such as clean hydrogen, bioenergy and renewable natural gas.

**Additional information for the year ended March 31, 2021, is available on the Investors section of [www.nisource.com](http://www.nisource.com), including segment and financial information and our presentation to be discussed at the company's first quarter 2021 earnings conference call scheduled for May 5, 2021 at 11 a.m. ET.**

### **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 7,500 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve. NiSource is a member of the Dow Jones Sustainability - North America Index and the Bloomberg Gender Equality Index and has been named by *Forbes* magazine among America's Best Large Employers since 2016. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found at [www.nisource.com](http://www.nisource.com). Follow us at [www.facebook.com/nisource](http://www.facebook.com/nisource), [www.linkedin.com/company/nisource](http://www.linkedin.com/company/nisource) or [www.twitter.com/nisourceinc](http://www.twitter.com/nisourceinc). NI-F

### **Forward-Looking Statements**

This press release contains "forward-looking statements," within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. Expressions of future goals and expectations and similar expressions, including "may," "will," "should," "could," "would," "aims," "seeks," "expects," "plans," "anticipates," "intends," "believes," "estimates," "predicts," "potential," "targets," "forecast," and "continue," reflecting something other than historical fact are intended to identify forward-looking statements. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially.

Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include, among other things, our ability to execute our business plan or growth strategy, including utility infrastructure investments; potential incidents and other operating risks associated with our business; our ability to adapt to, and manage costs related to, advances in technology; impacts related to our aging infrastructure; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the success of our electric generation strategy; construction risks and natural gas costs and supply risks; fluctuations in demand from residential and commercial customers; fluctuations in the price of energy commodities and related transportation costs or an inability to obtain an adequate, reliable and cost-effective fuel supply to meet customer demands; the attraction and retention of a qualified workforce and ability to maintain good labor relations; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; potential cyber-attacks; any damage to our reputation; any remaining liabilities or impact related to the sale of Massachusetts Business; the impacts of natural disasters, potential terrorist attacks or other catastrophic events; the impacts of climate change and extreme weather conditions; our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; any

adverse effects related to our equity units; adverse economic and capital market conditions or increases in interest rates; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; continuing and potential future impacts from the COVID-19 pandemic; economic conditions in certain industries; the reliability of customers and suppliers to fulfill their payment and contractual obligations; the ability of our subsidiaries to generate cash; pension funding obligations; potential impairments of goodwill; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; potential remaining liabilities related to the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; changes in taxation; and other matters set forth in Item 1, "Business," Item 1A, "Risk Factors" and Part II. Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the company's annual report on Form 10-K for the year ended December 31, 2020; and item 1A, "Risk Factors," of the company's quarterly report on Form 10-Q for the quarter ended March 31, 2021, some of which risks are beyond our control. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

#### **Regulation G Disclosure Statement**

This press release includes financial results and guidance for NiSource with respect to net operating earnings available to common shareholders, which is a non-GAAP financial measure as defined by the Securities and Exchange Commission's (SEC) Regulation G. The company includes this measure because management believes it permits investors to view the company's performance using the same tools that management uses and to better evaluate the company's ongoing business performance. With respect to such guidance, it should be noted that there will likely be a difference between this measure and its GAAP equivalent due to various factors, including, but not limited to, fluctuations in weather, the impact of asset sales and impairments, and other items included in GAAP results. The company is not able to estimate the impact of such factors on GAAP earnings and, as such, is not providing earnings guidance on a GAAP basis. In addition, the company is not able to provide a reconciliation of its non-GAAP net operating earnings guidance to its GAAP equivalent without unreasonable efforts.

Schedule 1 - Reconciliation of Consolidated Net Income Available to Common Shareholders to Net Operating Earnings Available to Common Shareholders (Non-GAAP) *(unaudited)*

<i>(in millions, except per share amounts)</i>	Three Months Ended March 31,	
	2021	2020
<b>GAAP Net Income Available to Common Shareholders</b>	<b>\$ 281.7</b>	<b>\$ 61.8</b>
<b>Adjustments to Operating Income:</b>		
<b>Operating Revenues:</b>		
Weather - compared to normal	9.0	26.3
<b>Operating Expenses:</b>		
Greater Lawrence Incident <sup>(1)</sup>	5.8	8.1
NiSource Next initiative <sup>(2)</sup>	9.7	—
Massachusetts Business sale related amounts <sup>(3)</sup>	6.9	280.2
Gain on sale of assets, net	—	(0.1)
Total adjustments to operating income	31.4	314.5
<b>Income Taxes:</b>		
Tax effect of above items <sup>(4)</sup>	(8.3)	(85.4)
Total adjustments to net income	23.1	229.1
<b>Net Operating Earnings Available to Common Shareholders (Non-GAAP)</b>	<b>\$ 304.8</b>	<b>\$ 290.9</b>
<b>Average Common Shares Outstanding<sup>(5)</sup></b>	<b>393.9</b>	<b>383.1</b>
<b>GAAP Diluted Earnings Per Share</b>	<b>\$ 0.72</b>	<b>\$ 0.16</b>
Adjustments to diluted earnings per share	0.05	0.60
<b>Non-GAAP Diluted Net Operating Earnings Per Share</b>	<b>\$ 0.77</b>	<b>\$ 0.76</b>

<sup>(1)</sup>Represents costs incurred for estimated third-party claims and related other expenses as a result of the Greater Lawrence Incident.

<sup>(2)</sup>Represents incremental severance and third-party consulting costs incurred in connection with the NiSource Next initiative.

<sup>(3)</sup>2021 represents loss incurred for the Massachusetts Business primarily due to net working capital adjustments on the final purchase price. 2020 represents loss recorded as a result of measuring the assets and liabilities of the Massachusetts Business at fair value, less costs to sell.

<sup>(4)</sup>Represents income tax expense calculated using the statutory tax rates by legal entity.

<sup>(5)</sup>Beginning in 2021, we changed our Non-GAAP measure from Basic to Diluted Net Operating Earnings per Share. Diluted Average Common Shares Outstanding would have been 384.1M in 2020, resulting in no change to Non-GAAP Net Operating Earnings per Share of \$0.76.

FORM 8-K

APRIL 13, 2021

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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

Date of report (Date of earliest event reported) April 13, 2021

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**NiSource Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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**DE**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
(Commission  
File Number)

**35-2108964**  
(IRS Employer  
Identification No.)

**801 East 86th Avenue**  
**Merrillville, IN**  
(Address of Principal Executive Offices)

**46410**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (877) 647-5990**

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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 (*see* General Instruction A.2. below):

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

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Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE
Series A Corporate Units	NIMC	NYSE

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

Emerging growth company

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**Item 1.01 Entry into a Material Definitive Agreement.**

On April 13, 2021, NiSource Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, as representatives of the several underwriters listed on Schedule I thereto (collectively, the “Underwriters”), pursuant to which the Company agreed to issue and sell to the Underwriters, 7,500,000 of the Company’s Series A Equity Units initially in the form of Series A Corporate Units (the “Firm Corporate Units”). The Company granted the Underwriters an overallotment option to purchase an additional 1,125,000 Series A Corporate Units (the “Optional Corporate Units” and, together with the Firm Corporate Units, the “Corporate Units”), which was exercised in full concurrently with the closing of the Firm Corporate Units. The sale of 8,625,000 Corporate Units closed on April 19, 2021.

Each Corporate Unit has a stated amount of \$100 and is comprised of (i) a purchase contract which will obligate the holder to purchase from the Company, no later than December 1, 2023, a certain number of shares of the Company’s common stock, par value \$0.01 per share, and (ii) a 1/10th undivided beneficial ownership interest in one share of the Company’s Series C Mandatory Convertible Preferred Stock (“Mandatory Convertible Preferred Stock”).

The purchase contracts for the Corporate Units are being issued pursuant to a Purchase Contract and Pledge Agreement, dated as of April 19, 2021, between the Company and U.S. Bank National Association, in its capacity as the purchase contract agent, collateral agent, custodial agent and securities intermediary (the “Purchase Contract and Pledge Agreement”). Under the terms of the Purchase Contract and Pledge Agreement, the Mandatory Convertible Preferred Stock comprising a part of each Corporate Unit is being pledged as collateral to secure the holders’ obligation to purchase the shares of common stock under the purchase contracts that form a part of the Corporate Units. The Mandatory Convertible Preferred Stock will be remarketed, subject to certain terms and conditions, prior to the related purchase contract settlement date pursuant to the terms of the Purchase Contract and Pledge Agreement and a remarketing agreement to be entered into among the Company, U.S. Bank National Association, in its capacity as the purchase contract agent, and a remarketing agent or agents to be designated by the Company.

A copy of the Underwriting Agreement is attached hereto as Exhibit 1.1 and is incorporated herein by reference. The foregoing description of the material terms of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

A copy of the Purchase Contract and Pledge Agreement is attached hereto as Exhibit 4.1 and is incorporated herein by reference. The foregoing description of the material terms of the Purchase Contract and Pledge Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

A copy of the legal opinion and consent of Fried Frank Harris, Shriver & Jacobson LLP, relating to the Corporate Units is attached hereto as Exhibit 5.1.

**Item 5.03 Amendments to Certificate of Incorporation or Bylaws**

In connection with the offering, on April 19, 2021, the Company filed the Certificate of Designations of Series C Mandatory Convertible Preferred Stock (the “Certificate of Designations”) with the Secretary of State of Delaware to establish the terms, rights, obligations and preferences of the Series C Mandatory Convertible Preferred Stock. The Certificate of Designations became effective upon the filing with the Secretary of State of Delaware. The Certificate of Designations designates 862,500 shares as Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share.

The foregoing description of the Certificate of Designations and the terms of the Series C Mandatory Convertible Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Certificate of Designations, a copy of which is being filed as Exhibit 3.1 hereto and is incorporated by reference herein.



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**Item 8.01 Other Events.**

The information set forth in Item 1.01 is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
1.1	<a href="#"><u>Underwriting Agreement, dated April 13, 2021, among NiSource Inc. and Goldman Sachs &amp; Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, as representatives for the underwriters named therein relating to the Series A Corporate Units.</u></a>
3.1	<a href="#"><u>Certificate of Designations with respect to the Series C Mandatory Convertible Preferred Stock, dated April 19, 2021.</u></a>
4.1	<a href="#"><u>Purchase Contract and Pledge Agreement, dated April 19, 2021, between NiSource Inc. and U.S. Bank National Association, in its capacity as the purchase contract agent, collateral agent, custodial agent and securities intermediary.</u></a>
4.2	<a href="#"><u>Form of Series A Corporate Units Certificate (included in Exhibit 4.1).</u></a>
4.3	<a href="#"><u>Form of Series A Treasury Units Certificate (included in Exhibit 4.1).</u></a>
4.4	<a href="#"><u>Form of Series A Cash Settled Units Certificate (included in Exhibit 4.1).</u></a>
4.5	<a href="#"><u>Form of Series C Mandatory Convertible Preferred Stock Certificate (included in Exhibit 3.1).</u></a>
5.1	<a href="#"><u>Opinion of Fried Frank Harris, Shriver &amp; Jacobson LLP with respect to the Series A Equity Units.</u></a>
23.1	<a href="#"><u>Consent of Fried Frank Harris, Shriver &amp; Jacobson LLP with respect to the Series A Equity Units (included in Exhibit 5.1).</u></a>
104	Cover page Interactive Data File (embedded within the Inline XBRL document).

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**SIGNATURES**

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

NiSource Inc.  
\_\_\_\_\_  
(Registrant)

Date: April 19, 2021

By: \_\_\_\_\_  
/s/ Donald E. Brown  
Donald E. Brown  
Executive Vice President and Chief Financial Officer

Exhibit 1.1

NISOURCE INC.

UNDERWRITING AGREEMENT

7,500,000 Corporate Units

April 13, 2021

Goldman Sachs & Co. LLC  
J.P. Morgan Securities LLC  
Wells Fargo Securities, LLC As Representatives of the several Underwriters named in Schedule I hereto

c/o Goldman Sachs & Co. LLC  
200 West Street  
New York, New York 10282

c/o J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179

c/o Wells Fargo Securities, LLC  
500 West 33rd Street  
New York, New York 10001

Ladies and Gentlemen:

1. **Introductory.** NiSource Inc., a Delaware corporation (“**NiSource**” or the “**Company**”), agrees with the several underwriters listed in Schedule I hereto (the “**Underwriters**”), for whom Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC are acting as Representatives (the “**Representatives**”), to issue and sell to the several Underwriters 7,500,000 of the Company’s Series A Corporate Units (the “**Firm Corporate Units**”) and, at the option of the Underwriters, up to an additional 1,125,000 Series A Corporate Units (the “**Optional Corporate Units**,” and together with the Firm Corporate Units, the “**Corporate Units**”). Each Corporate Unit has a stated amount of \$100 (the “**Stated Amount**”) and consists of (i) a Purchase Contract (a “**Purchase Contract**”) issued by the Company pursuant to which the holder thereof will agree to purchase from the Company and the Company will agree to sell to the holder thereof on December 1, 2023, subject to earlier settlement or termination, or if such day is not a business day, the following business day (the “**Purchase Contract Settlement Date**”), for \$100 a variable number of shares of the Company’s common stock, without par value (the “**Common Stock**”), equal to the Settlement Rate (as defined in the Pricing Prospectus), subject to anti-dilution adjustments and subject to adjustment in certain circumstances if the holder elects to settle the Purchase Contract early, as determined pursuant to the terms of the Purchase Contract and Pledge Agreement (as defined below) and (ii) (a) a 1/10th undivided beneficial ownership interest in one share of Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share (the “**Mandatory Convertible Preferred Securities**”) or (b) following a successful optional remarketing, the “applicable ownership interest” (as defined in the Pricing Prospectus) in the “Treasury portfolio” (as defined in the Pricing Prospectus) (the Purchase Contracts together with the Mandatory Convertible Preferred Securities, in the form of Corporate Units or otherwise, the “**Securities**”). The Mandatory Convertible Preferred Securities will automatically convert into shares of Common Stock on the second business day immediately following the last trading day of the “mandatory averaging period” (as defined in the Pricing Prospectus) (the “**Underlying Securities**”). The Purchase Contracts will be issued

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under a Purchase Contract and Pledge Agreement dated as of the Closing Date (as defined herein) (the “**Purchase Contract and Pledge Agreement**”) among the Company and U.S. Bank National Association, as Purchase Contract agent and as collateral agent (the “**Collateral Agent**”). The Mandatory Convertible Preferred Securities will be established by a Certificate of Designations to the Company’s Amended and Restated Certificate of Incorporation (the “**Certificate of Designations**”) to be filed with the Secretary of State of Delaware and with all other offices where such filing is required, on or before April 19, 2021. The holders of the Corporate Units will pledge their interests in the Mandatory Convertible Preferred Securities forming a part of the Corporate Units to the Collateral Agent under the Purchase Contract and Pledge Agreement to secure their obligations under the Purchase Contracts to purchase shares of Common Stock. To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. The term “**Equity Units**” includes both Corporate Units and Treasury Units.

2. Representations and Warranties of NiSource. NiSource represents and warrants to, and agrees with, the Underwriters (i) on and as of the date hereof, (ii) at and as of 5:45 p.m., New York City time, on April 13, 2021 (the “**Applicable Time**”), (iii) on and as of the Closing Date, and (iv) on and as of any settlement date that:

(a) Registration Statement, Pricing Disclosure Package and Prospectus. An automatic shelf registration statement on Form S-3 (No. 333-234422), including a prospectus, relating to the Company’s securities, including the Securities, has been filed with the Securities and Exchange Commission (“**Commission**”) and became effective upon filing. Such registration statement, as used with respect to the Securities, including the information deemed a part thereof pursuant to Rule 430B(f)(1) under the Securities Act of 1933, as amended (the “**Act**”), on the date of such registration statement’s effectiveness for purposes of Section 11 of the Act, as such section applies to NiSource and the Underwriters for the Securities pursuant to Rule 430B(f)(2) under the Act (the “**Effective Date**”), including the exhibits thereto and all documents incorporated by reference therein pursuant to Item 12 of Form S-3 at the Effective Date, is hereinafter referred to as the “**Registration Statement**”; the base prospectus relating to NiSource’s registered securities, including the Securities, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement being herein called the “**Basic Prospectus**”; the Basic Prospectus as amended and supplemented by a preliminary prospectus supplement relating to the Securities and as further amended and supplemented immediately prior to the Applicable Time is hereinafter called the “**Pricing Prospectus**”; the Basic Prospectus as amended or supplemented in final form, which is filed with the Commission pursuant to Rule 424(b) under the Act with respect to the Securities is hereinafter called the “**Final Supplemented Prospectus**”; any reference herein to the Basic Prospectus, any Pricing Prospectus or any Final Supplemented Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Act, as of the date of such Basic Prospectus, Pricing Prospectus or Final Supplemented Prospectus, as the case may be; any reference to any amendment or supplement to the Basic Prospectus, any Pricing Prospectus or any Final Supplemented Prospectus shall be deemed to refer to and include any documents filed after the date of such Basic Prospectus, Pricing Prospectus or Final Supplemented Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), and incorporated by reference in such Basic Prospectus, Pricing Prospectus or Final Supplemented Prospectus, as the case may be; and any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of NiSource filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement.

For purposes of this Agreement, the documents listed in Schedule II under the caption, “Pricing Disclosure Package,” taken together, are referred to as the “**Pricing Disclosure Package**.”

(b) Incorporated Documents. The documents incorporated by reference in the Registration Statement or the Pricing Prospectus, when they were filed with the Commission, complied in all material respects with the applicable provisions of the 1934 Act and the rules and regulations of the Commission thereunder, and as of such time of filing, when read together with the Pricing Prospectus and any Permitted Free Writing Prospectus (as defined below), none of such documents contained an untrue

statement of a material fact or omitted to state a 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; and any further documents so filed and incorporated by reference in the Final Supplemented Prospectus or any further amendment or supplement thereto, when such documents are filed with the Commission, will comply in all material respects with the applicable provisions of the 1934 Act and the rules and regulations of the Commission thereunder and, when read together with the Final Supplemented Prospectus as it otherwise may be amended or supplemented, 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, in the light of the circumstances under which they were made, not misleading.

(c) Compliance with Act and 1934 Act. The Registration Statement complies and the Final Supplemented Prospectus will comply when first filed in accordance with Rule 424(b) and on the Closing Date and on any date on which Optional Corporate Units are purchased, if such date is not the Closing Date (a “**settlement date**”), and any further amendments or supplements thereto, when any such amendments become effective or supplements are filed with the Commission, as the case may be, will comply, in all material respects with the applicable provisions of the Act, the 1934 Act, the Trust Indenture Act of 1939, as amended (“**Trust Indenture Act**”), and the general rules and regulations of the Commission thereunder, and the Registration Statement, the Pricing Disclosure Package and the Final Supplemented Prospectus do not and will not, (i) as of the Effective Date as to the Registration Statement and any amendment thereto, (ii) as of the Applicable Time as to the Pricing Disclosure Package and (iii) as of the date of the Final Supplemented Prospectus and the Closing Date as to the Final Supplemented Prospectus or as of the date when any supplement is filed as to the Final Supplemented Prospectus as further supplemented, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the case of the Registration Statement and any amendment thereto, and, in the light of the circumstances under which they were made, not misleading in the case of the Pricing Disclosure Package and the Final Supplemented Prospectus as further supplemented; except that NiSource does not make any representations or warranties with respect to (A) that part of the Registration Statement which shall constitute the Statements of Eligibility (Form T-1) under the Trust Indenture Act or (B) statements or omissions made in a Permitted Free Writing Prospectus, the Registration Statement, the Pricing Prospectus or the Final Supplemented Prospectus in reliance upon and in conformity with information furnished in writing to NiSource by the Underwriters through the Representatives expressly for use therein.

Each Permitted Free Writing Prospectus does not include anything that conflicts with the information contained in the Registration Statement, the Pricing Prospectus or the Final Supplemented Prospectus, and each Permitted Free Writing Prospectus, as supplemented by and taken together with the Pricing Disclosure Package as of the Applicable Time, 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, except that NiSource makes no representation or warranty with respect to any statement or omissions made in a Permitted Free Writing Prospectus in reliance upon and in conformity with information furnished in writing to NiSource by the Underwriters through the Representatives expressly for use therein.

(d) Automatic Shelf Registration Statement. With respect to the Registration Statement, (i) the Registration Statement is an “automatic shelf registration statement” (as defined in Rule 405 under the Act), (ii) NiSource has not received from the Commission any notice pursuant to Rule 401(g)(2) of the Act objecting to the use of the automatic shelf registration statement and (iii) the conditions for use of Form S-3, as set forth in the General Instructions thereof, have been satisfied.

(e) Well-Known Seasoned Issuer. (A) At the time of filing of the Registration Statement, (B) at the time of the most recent amendment to the Registration Statement for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus) and (C) at the time NiSource, or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Act), made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Act, NiSource was a “well-known seasoned issuer” (as defined in Rule 405 under the Act).

(f) Organization and Good Standing. NiSource has been duly incorporated and is a validly existing corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the Pricing Disclosure Package and the Final Supplemented Prospectus; and NiSource is duly qualified to transact business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction.

(g) Significant Subsidiaries. Each significant subsidiary (as defined in Rule 405 under the Act) of NiSource (each direct and indirect significant subsidiary of NiSource being hereinafter referred to as a “**Significant Subsidiary**” and all such direct and indirect significant subsidiaries of NiSource being hereinafter referred to collectively as the “**Significant Subsidiaries**”) has been duly incorporated or duly formed and is a validly existing corporation or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its incorporation or formation, with power and authority (corporate or limited liability, and other) to own its properties and conduct its business as described in the Pricing Disclosure Package and the Final Supplemented Prospectus; and each Significant Subsidiary is duly qualified to do business as a foreign corporation or limited liability company, as the case may be, in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction; all of the issued and outstanding capital stock or other equity interests of each Significant Subsidiary has been duly authorized and validly issued and is fully paid and, to the extent applicable, non-assessable; and except as otherwise disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, all of the capital stock or other equity interests of each Significant Subsidiary is owned by NiSource, directly or through Subsidiaries (as defined below), free from liens, encumbrances and defects.

(h) Purchase Contract and Pledge Agreement. The Purchase Contract and Pledge Agreement has been duly authorized and, when validly executed and delivered by NiSource and the other parties thereto, will constitute a valid and legally binding obligation of NiSource, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors’ rights and to general equity principles; and the Purchase Contract and Pledge Agreement will conform to the descriptions thereof contained in the Pricing Disclosure Package and the Final Supplemented Prospectus.

(i) Authorized Capitalization. The Company has an authorized capitalization as set forth in the Pricing Disclosure Package and the Final Supplemented Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable.

(j) Common Stock. The shares of Common Stock, if any, issuable upon settlement of the Purchase Contracts (including the maximum number that may be issued upon settlement of the Purchase Contracts in connection with a fundamental change (the “**Maximum Number of Purchase Contract Securities**”)) have been duly authorized and reserved and, when issued and paid for upon settlement of the Purchase Contracts in accordance with the terms of the Purchase Contracts, will be validly issued, fully paid and non-assessable, and the issuance of such shares will not be subject to any preemptive or similar rights.

(k) Mandatory Convertible Preferred Securities, Purchase Contracts and Certificate of Designations. The Mandatory Convertible Preferred Securities, including the Certificate of Designations, have been duly authorized by the Company and, when the Mandatory Convertible Preferred Securities have been delivered and paid for in accordance with this Agreement and the Purchase Contract and Pledge Agreement on the Closing Date, will be validly issued, fully paid and non-assessable and will not be subject to any preemptive or similar rights; the Certificate of Designations, the proposed form of which has been furnished to you, will have been duly filed with the Secretary of State of Delaware and with all other offices where such filing is required, on or before April 19, 2021, and the holders of the Mandatory Convertible Preferred Securities will, upon such filing, have the rights, preferences and priorities set forth in the

Certificate of Designations. The Purchase Contracts have been duly authorized by the Company; when the Purchase Contracts have been executed and authenticated in accordance with the provisions of the Purchase Contract and Pledge Agreement and delivered to and paid for by the Underwriters pursuant to this Agreement, the Purchase Contracts will be duly and validly issued, will constitute legal, valid and binding obligations of the Company and the holders thereof will be entitled to the benefits provided in the Purchase Contract and Pledge Agreement. The Purchase Contracts, the Mandatory Convertible Preferred Securities and the Certificate of Designations will conform to the descriptions thereof contained in the Pricing Disclosure Package and the Final Supplemented Prospectus; the stockholders of the Company have no statutory preemptive rights with respect to the Purchase Contracts and the Mandatory Convertible Preferred Securities.

(l) Corporate Units. The Corporate Unit certificates have been duly and validly authorized and on the Closing Date, when paid for by the Underwriters pursuant to this Agreement, will be duly executed and delivered.

(m) No Consents Required. No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement, the Certificate of Designations, the Mandatory Convertible Preferred Securities, the Purchase Contracts and the Purchase Contract and Pledge Agreement and the consummation of the transactions herein and therein contemplated in connection with the issuance of the Mandatory Convertible Preferred Securities and the issuance and sale of the Purchase Contracts, except (i) such as have been obtained and made under the Act and (ii) such as may be required under the Federal Power Act, and under state securities laws.

(n) Authority. The Company has the full right, power and authority to execute and deliver this Agreement, the Purchase Contract and Pledge Agreement, the Certificate of Designations, the Mandatory Convertible Preferred Securities, the Purchase Contracts and the Corporate Units certificates (collectively, the “**Transaction Documents**”) and to perform its obligations hereunder and thereunder.

(o) No Violation or Default. The Company is not in violation of its charters or bylaws or in default in the performance or observance of any material obligation, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound.

(p) No Violation or Default Resulting from Transaction. The execution, delivery and performance by the Company of the Transaction Documents and the consummation of the transactions herein and therein contemplated will not result in a breach or violation of any of the terms and provisions hereof and thereof, or constitute a default under, (i) the charter or by-laws of NiSource or any subsidiary of NiSource (each direct and indirect subsidiary of NiSource being hereinafter referred to as a “**Subsidiary**” and all such direct and indirect subsidiaries of NiSource being hereinafter referred to collectively as the “**Subsidiaries**”), (ii) any statute or any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over NiSource or any Subsidiary or any of their properties, or (iii) any agreement or instrument to which NiSource or any Subsidiary is a party or by which NiSource or any Subsidiary is bound or to which any of the properties of NiSource or any Subsidiary is subject, except in the case of clauses (ii) and (iii) where such violation, breach or default would not, individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, properties or results of operations of NiSource and the Subsidiaries taken as a whole (“**Material Adverse Effect**”) and would not materially and adversely affect the ability of NiSource to perform its obligations under the Transaction Documents, or which would otherwise be material in the context of the sale of the Securities.

(q) Authorization of Underwriting Agreement. This Agreement has been duly authorized, executed and delivered by NiSource.

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(r) Title to Real and Personal Property. Except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, NiSource and the Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances and defects that would materially interfere with the use made or to be made thereof by them or would, individually or in the aggregate, have a Material Adverse Effect; and except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, NiSource and the Subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them or would, individually or in the aggregate, have a Material Adverse Effect.

(s) Licenses and Permits. Except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, NiSource and the Subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to NiSource or any of the Subsidiaries would, individually or in the aggregate, have a Material Adverse Effect.

(t) Material Contingent Liability. Except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, neither NiSource nor any Significant Subsidiary has any material contingent liability.

(u) Legal Proceedings. Except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, there are no pending actions, suits, proceedings or investigations against or affecting NiSource or any Subsidiary or any of their respective properties, assets or operations that could, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect or to affect materially and adversely the ability of NiSource to perform its obligations under the Transaction Documents, or which are otherwise material in the context of the sale of the Securities; and, to the knowledge of NiSource, no such actions, suits, proceedings or investigations are threatened.

(v) Financial Statements. The financial statements of NiSource included or incorporated by reference in the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus present fairly the financial position of the entity presented and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and, except as otherwise disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis with all other financial statements presented for such entity; and any schedules included or incorporated by reference in the Registration Statement, Pricing Prospectus and the Final Supplemented Prospectus present fairly the information required to be stated therein. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in each of the Registration Statement, the Pricing Prospectus, the Pricing Disclosure Package and the Final Supplemented Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto.

(w) No Material Adverse Change. Except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package and the Final Supplemented Prospectus there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of NiSource and the Subsidiaries taken as a whole, and, except as disclosed in or contemplated by the Pricing Disclosure Package and the Final Supplemented Prospectus, there has been no dividend or distribution of any kind declared, paid or made by NiSource on any class of its capital stock.

(x) Investment Company Act. NiSource is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Pricing Disclosure Package and the Final Supplemented Prospectus, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.



(y) Ineligible Issuer. At the determination date for purposes of the Securities within the meaning of Rule 164(h) under the Act, NiSource was not an “ineligible issuer” as defined in Rule 405 under the Act.

(z) Disclosure Controls. NiSource maintains a system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) of the 1934 Act) that is designed to ensure that information required to be disclosed by NiSource in reports that it files or submits under the 1934 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 NiSource’s management as appropriate to allow timely decisions regarding required disclosure. NiSource has carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the 1934 Act.

(aa) Accounting Controls. NiSource maintains a system of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the 1934 Act) that complies with the requirements of the 1934 Act and has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to, 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 generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(bb) No Conflicts with Sanctions Laws. None of the Company, any Significant Subsidiary or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its Subsidiaries is currently the subject or the target of any sanctions administered or enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council (“**UNSC**”), the European Union, Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company or any of its Subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, the Crimea region, Iran, North Korea and Syria (each, a “**Sanctioned Country**”); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in a manner intended to result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past five years, to the knowledge of the Company, the Company and its Subsidiaries taken as a whole have conducted their businesses in material compliance with the Sanctions.

(cc) No Unlawful Payments. Neither NiSource nor, to the knowledge of NiSource, any director, officer, agent, employee or affiliate of NiSource has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(dd) Compliance with Anti-Money Laundering Laws. The operations of NiSource and the Subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept

and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where NiSource or its Subsidiaries conducts business, the rules and regulations thereunder and any applicable related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving NiSource or any of the Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of NiSource or any of the Subsidiaries, threatened.

(ee) Accuracy of Statements. The statements set forth in the Pricing Prospectus and the Final Supplemented Prospectus under the captions “Description of the Equity Units”, “Description of the Purchase Contracts”, “Certain Provisions of the Purchase Contract and Pledge Agreement”, “Description of the Mandatory Convertible Preferred Stock”, “Material U.S. Federal Income and Estate Tax Consequences” are accurate, complete and fair in all material respects;

(ff) Stabilization or Manipulation. The Company has not taken and will not take, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result, under the 1934 Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(gg) Maximum Number of Underlying Securities. The maximum number of shares of Common Stock issuable upon conversion of the Mandatory Convertible Preferred Securities (including the maximum number that may be issued upon conversion of the Mandatory Convertible Preferred Securities in connection with a fundamental change (the “**Maximum Number of Underlying Securities**”)) have been duly authorized and reserved and, when issued upon conversion of the Mandatory Convertible Preferred Securities in accordance with the terms of the Mandatory Convertible Preferred Securities, will be validly issued, fully paid and nonassessable, and the issuance of such shares of Common Stock will not be subject to any preemptive or similar rights.

(hh) Environmental Laws. Except as disclosed in the Registration Statement, Pricing Disclosure Package and the Final Supplemented Prospectus (exclusive of any supplement thereto), the Company and each of its Subsidiaries are in compliance with any and all laws (including common laws), statutes, rules, regulations, decisions, consents, orders or other legally enforceable requirements of, and agreements with, any governmental agency or body or any court, domestic or foreign, relating to the protection or restoration of the environment or natural resources, or hazardous or toxic substances, wastes, pollutants, chemicals or contaminants (“**Hazardous Materials**”), including human exposure to Hazardous Materials (collectively, “**Environmental Laws**”), except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

3. Purchase and Offering of Securities. (a) The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$97.3840 per Corporate Unit, the number of Firm Corporate Units set forth opposite the name of such Underwriter in Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, at a purchase price of \$97.3840 per Corporate Unit, up to 1,125,000 Optional Corporate Units. Said option may be exercised only to cover over-allotments in the sale of the Corporate Units by the Underwriters. Said option may be exercised in whole or in part, but in any event not more than once, at any time, upon written or telegraphic notice by the Representatives to the Company setting forth the aggregate of the Optional Corporate Units as to which the several Underwriters are exercising the option and the settlement date; provided that in no event shall the settlement date of such Optional Corporate Units be later than the 12<sup>th</sup> day after the Closing Date. The aggregate number of Optional Corporate Units to be purchased by each Underwriter shall be in the same proportion as the Firm Corporate Units are allocated among the Underwriters, subject to such adjustments as the Company in its sole discretion shall make, or cause to be made, to eliminate any sales or purchases of fractional Optional Corporate Units.

(c) Delivery of and payment for the Firm Corporate Units and the Optional Corporate Units (if the option provided for in Section 3(b) hereof shall have been exercised on or before the business day immediately preceding the Closing Date) shall be made at the offices of Davis, Polk & Wardwell LLP at 10:00 a.m., New York City time, on April 19, 2021, or at such time on such later date not more than the third business day thereafter as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company. Such time and date for delivery of the Corporate Units is herein called the “**Closing Date**.” Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same day funds to an account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company (“**DTC**”) unless the Representatives otherwise instruct.

(d) If the option provided for in Section 3(b) hereof is exercised after the business day immediately preceding the Closing Date, delivery and payment for the Optional Corporate Units shall be made on the date and time and place specified by the Representatives in the written notice of the Underwriters’ election to purchase such Optional Corporate Units. If settlement for the Optional Corporate Units occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Optional Corporate Units, and the obligation of the Underwriters to purchase the Optional Corporate Units shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Free Writing Prospectuses. (a) NiSource represents and agrees that, without the prior consent of the Representatives, it has not made and will not make any offer relating to the Securities that would constitute a “free writing prospectus” as defined in Rule 405 under the Act, other than a Permitted Free Writing Prospectus; and each Underwriter, severally and not jointly, represents and agrees that, without the prior consent of NiSource and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute a “free writing prospectus” as defined in Rule 405 under the Act, other than a Permitted Free Writing Prospectus, a free writing prospectus that is required to be filed by NiSource pursuant to Rule 433 or one or more free writing prospectuses disseminated through customary Bloomberg distribution that do not contain substantive changes from or additions to the information contained in the Permitted Free Writing Prospectus. Any such free writing prospectus (which shall include the Pricing Term Sheet discussed in Section 4(b) hereof and the form of which is provided in Exhibit A hereto), the use of which shall have been consented to by NiSource and the Representatives, is herein called a “Permitted Free Writing Prospectus.”

(b) NiSource agrees to prepare a Pricing Term Sheet, substantially in the form provided in Exhibit A hereto and approved by the Representatives, and to file the Pricing Term Sheet pursuant to Rule 433(d) under the Act within the time period prescribed by such Rule.

(c) NiSource and the Representatives have complied and will comply with the requirements of Rule 433 under the Act applicable to any free writing prospectus, including timely Commission filing where required and legending.

(d) NiSource agrees that if at any time following issuance of a Permitted Free Writing Prospectus any event occurred or occurs as a result of which such Permitted Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Prospectus or the Final Supplemented Prospectus or include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances then prevailing, not misleading, NiSource will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter a free writing prospectus or other document, the use of which has been consented to by the Representatives, which will correct such conflict, statement or omission; provided, however, that this Section 4(d) shall not apply to any statements or omissions in a Permitted Free Writing Prospectus made in reliance upon and in conformity with information furnished in writing to NiSource by an Underwriter through the Representatives, expressly for use therein.

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(e) NiSource agrees that if there occurs an event or development as a result of which the Pricing Disclosure Package would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances then prevailing, not misleading, NiSource will promptly notify the Representatives so that any use of the Pricing Disclosure Package may cease until it is amended or supplemented.

5. Certain Agreements of NiSource. NiSource agrees with the several Underwriters that it will furnish to counsel for the Underwriters, one copy of the executed Registration Statement relating to the Company's securities, including all exhibits, in the form in which it became effective and of all amendments thereto and that, in connection with the offering of the Securities:

(a) Filing of Final Supplemented Prospectus. NiSource will file the Final Supplemented Prospectus, in a form approved by the Representatives, such approval not to be unreasonably withheld, with the Commission pursuant to and in accordance with Rule 424(b) and within the time period required by Rule 424. Furthermore, NiSource will make any other required filings pursuant to Rule 433(d)(1) of the Act within the time period required by such Rule.

(b) Amendment or Supplements to Registration Statement or Final Supplemented Prospectus. NiSource will advise the Representatives promptly of any proposal to amend or supplement the Registration Statement or the Final Supplemented Prospectus and will afford the Representatives a reasonable opportunity to comment on any such proposed amendment or supplement; and NiSource will also advise the Representatives promptly of the filing of any such amendment or supplement and of the institution by the Commission of any stop order proceedings in respect of the Registration Statement or of any part thereof and will use its best efforts to prevent the issuance of any such stop order and to obtain as soon as possible its lifting, if issued.

(c) Ongoing Compliance with Act and 1934 Act. NiSource will comply with the provisions of the Act, the 1934 Act and the rules and regulations of the Commission thereunder so as to permit completion of the distribution of the Securities as contemplated by this Agreement, the Registration Statement, the Pricing Disclosure Package and the Final Supplemented Prospectus. If, at any time when a prospectus relating to the Securities is required to be delivered under the Act (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) in connection with sales by any Underwriter or dealer, any event occurs as a result of which the Final Supplemented Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Final Supplemented Prospectus to comply with the Act, NiSource promptly will notify the Representatives of such event and will promptly prepare and file with the Commission, at the expense of NiSource, an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance. Neither the Representatives' consent to, nor the Underwriters' delivery of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 6 hereof.

(d) Earnings Statement to Securityholders. As soon as practicable, but not later than 16 months, after the date of this Agreement, NiSource will make generally available to its securityholders an earnings statement covering a period of at least 12 months beginning after the later of (i) the Effective Date of the Registration Statement, (ii) the effective date of the most recent post-effective amendment to the Registration Statement to become effective prior to the date of this Agreement and (iii) the date of NiSource's most recent Annual Report on Form 10-K filed with the Commission prior to the date of this Agreement, which will satisfy the provisions of Section 11(a) of the Act.

(e) Supplying Information. NiSource will furnish to the Representatives copies of the Registration Statement, including all exhibits, any Pricing Prospectus, any Permitted Free Writing Prospectus, the Final Supplemented Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Representatives reasonably request. NiSource will pay the expenses of printing and distributing to the Underwriters all such documents.

(f) Blue Sky Compliance. NiSource will arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives designate and will continue such qualifications in effect so long as required for the distribution, provided that, in connection with such qualification, NiSource shall not be required to qualify as a foreign corporation or file a general consent to service of process in any such jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(g) Delivery of 1934 Act Reports. During the period of five years after the date of this Agreement, NiSource will furnish to the Representatives and, upon request, to each of the other Underwriters, if any, as soon as practicable after the end of each fiscal year, a copy of its annual report to stockholders for such year; and NiSource will furnish to the Representatives (i) as soon as available, a copy of each report and any definitive proxy statement of NiSource filed with the Commission under the 1934 Act or mailed to stockholders, and (ii) from time to time, such other information concerning NiSource as the Representatives may reasonably request; provided that no reports, proxy statements or other information need be furnished pursuant to this Section 5(g) to the extent they are available on the Commission's Electronic Data Gathering, Analysis and Retrieval System.

(h) Fees and Expenses. NiSource will pay the costs and expenses relating to the following matters: (i) all expenses incident to the performance of its obligations under this Agreement, (ii) any filing fees or other expenses (including fees and disbursements of counsel) in connection with qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate and the printing of memoranda relating thereto, (iii) any fees associated with filing of the Certificate of Designations with the Secretary of State of the State of Delaware and the cost of preparing the Securities, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) any fees charged by investment rating agencies for the rating of the Securities, (v) any applicable filing fee incident to, and the reasonable fees and disbursements of counsel for the Underwriters in connection with, any review by the Financial Industry Regulatory Authority, Inc. of the Securities, (vi) the fees and expenses of the transfer agent, registrar and paying agent (including related fees and expenses of any counsel to such parties), (vii) all expenses and application fees related to the listing of the Securities on The New York Stock Exchange (the "**Stock Exchange**"), including all expenses and fees related to the listing of a number of shares of Common Stock equal to the sum of the Maximum Number of Purchase Contract Securities and the Maximum Number of Underlying Securities, (viii) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; and (ix) any travel expenses of its officers and employees and any other expenses incurred by them in connection with attending or hosting meetings with prospective purchasers of the Securities.

(i) Clear Market. The Company will not for a period of 45 days following the Applicable Time, without the prior written consent of the Representatives, offer, sell, contract to sell, pledge, otherwise dispose of, enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company), of any shares of Common Stock or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock; or publicly announce an intention to effect any such transaction; provided, however that the Company shall be permitted to file a shelf registration statement (or file any amendment to its existing shelf registration statement) with respect to such securities, provided that the Company shall not effect any sales of such securities pursuant to such shelf registration statement during the 45-day period described above; provided, further, that the Company may issue and sell Common Stock pursuant to any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the Applicable Time, the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding at the Applicable Time, and the Company may issue Common Stock upon settlement of the Purchase Contracts or upon conversion of the Mandatory Convertible Preferred Securities.

(j) Filing Obligation. If at any time when Securities remain unsold by the Underwriters, NiSource receives from the Commission a notice pursuant to Rule 401(g)(2) of the Act or otherwise ceases to be eligible to use the automatic shelf registration statement form, NiSource will (i) promptly notify the Representatives, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Securities, in a form satisfactory to the Representatives, (iii) use its reasonable best efforts to cause such registration statement or post-effective amendment to be declared effective and (iv) promptly notify the Representatives of such effectiveness. NiSource will take all other reasonable action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which NiSource has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(k) DTC. The Company will assist the Representatives in arranging for the Securities to be eligible for clearance and settlement through DTC.

(l) Listing on Stock Exchange. The Company will use its reasonable best efforts to effect the listing of the Corporate Units on the Stock Exchange within 30 days of the Closing Date.

(m) Common Stock. The Company will reserve and keep available at all times, free of preemptive rights (i) a number of shares of Common Stock equal to the aggregate Maximum Number of Purchase Contract Securities for the purposes of settling the Purchase Contracts and (ii) a number of shares of Common Stock equal to the aggregate Maximum Number of Underlying Securities for purposes of settling conversions of the Mandatory Convertible Preferred Securities.

(n) Adjustment of Maximum Settlement Rate. Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the maximum settlement rate under the Purchase Contracts.

(o) Adjustment of Conversion Rate. Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of any fixed conversion rate for the Mandatory Convertible Preferred Securities.

6. Conditions of the Obligations of the Underwriters. The obligations of the several Underwriters to purchase and pay for the Corporate Units will be subject to the accuracy of the representations and warranties of the Company contained herein at the Applicable Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of officers of NiSource made pursuant to the provisions hereof, to the performance by NiSource of its obligations hereunder and to the following additional conditions precedent:

(a) No Stop Order. The Final Supplemented Prospectus shall have been filed with the Commission in accordance with the rules and regulations of the Commission under the Act and Section 5(a) of this Agreement. No stop order suspending the effectiveness of the Registration Statement or of any part thereof shall have been issued and no proceedings for that purpose or pursuant to Section 8A of the Act against NiSource shall have been instituted or, to the knowledge of NiSource or any Underwriter, shall be contemplated by the Commission. The Pricing Term Sheet, and any other material required to be filed by NiSource pursuant to Rule 433(d) under the Act, shall have been filed by NiSource with the Commission within the applicable time periods prescribed for such filings by Rule 433.

(b) Comfort Letters. On or prior to the date of this Agreement, the Representatives shall have received a letter, dated the date of delivery thereof, of Deloitte & Touche LLP, confirming that they are an independent registered public accounting firm within the meaning of the Act and the applicable published rules and regulations of the Commission thereunder and stating to the effect that:

(i) in their opinion the financial statements and financial statement schedules audited by them and incorporated by reference in the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations of the Commission thereunder;

(ii) they have performed the procedures specified by the Public Company Accounting Oversight Board for a review of interim financial information as described in Statement of Auditing Standards No. 100, Interim Financial Information, or Statement of Auditing Standards No. 71, Interim Financial Information, as applicable, on any unaudited financial statements incorporated by reference in the Registration Statement and the Pricing Prospectus;

(iii) on the basis of the review referred to in clause (ii) above, a reading of the latest available interim financial statements of NiSource, inquiries of officials of NiSource who have responsibility for financial and accounting matters and other specified procedures, nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements, if any, incorporated by reference in the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related published rules and regulations of the Commission thereunder or any material modifications should be made to such unaudited financial statements for them to be in conformity with generally accepted accounting principles;

(B) if any unaudited “capsule” information is contained in the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus, the unaudited consolidated operating revenues, gross income, net income and net income per share amounts or other amounts constituting such “capsule” information and described in such letter do not agree with the corresponding amounts set forth in the unaudited consolidated financial statements or were not determined on a basis substantially consistent with that of the corresponding amounts in the audited statements of income;

(C) at the date of the latest available balance sheet read by such accountants, or at a subsequent specified date not more than two business days prior to the date of such letter, there was any change in the capital stock or any increase in short-term indebtedness or long-term debt of NiSource and its consolidated subsidiaries or, at the date of the latest available balance sheet read by such accountants, there was any decrease in consolidated net current assets or net assets, as compared with amounts shown on the latest balance sheet incorporated by reference in the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus; or

(D) for the period from the closing date of the latest income statement incorporated by reference in the Registration Statement, Pricing Prospectus and Final Supplemented Prospectus to the closing date of the latest available income statement read by such accountants there were any decreases, as compared with the corresponding period of the previous year, in consolidated gross revenues, operating income or net income; except in all cases set forth in clauses (C) and (D) above for changes, increases or decreases which the Registration Statement, the Pricing Prospectus and the Final Supplemented Prospectus discloses have occurred or may occur or which are described in such letter; and

(iv) they have compared specified dollar amounts (or percentages derived from such dollar amounts) and other financial information contained in the Pricing Prospectus and the Final Supplemented Prospectus (in each case to the extent that such dollar amounts, percentages and other financial information are derived from the general accounting records of NiSource and its subsidiaries subject to the internal controls of NiSource’s accounting system or are derived directly from such records by analysis or computation) with the results obtained from inquiries, a reading of such general accounting records and other procedures specified in such letter and have found such dollar amounts, percentages and other financial information to be in agreement with such results, except as otherwise specified in such letter.

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All financial statements and schedules included in material incorporated by reference into the Registration Statement, the Pricing Prospectus and the Final Supplemental Prospectus shall be deemed included in the Registration Statement, the Pricing Prospectus and the Final Supplemental Prospectus for purposes of this subsection.

(c) No Material Adverse Change. Subsequent to the execution of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of NiSource and the Subsidiaries taken as one enterprise which, in the judgment of the Representatives, is material and adverse and makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Securities; (ii) any downgrading in the rating of any debt securities or preferred stock of NiSource by any “nationally recognized statistical rating organization” (as defined in Section 3(a)(62) of the 1934 Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of NiSource (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (iii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of the Representatives, be likely to prejudice materially the success of the proposed issue, sale or disposition of the Securities, whether in the primary market or in respect of dealings in the secondary market; (iv) any material suspension or material limitation of trading in securities generally on the Stock Exchange, or any setting of minimum prices for trading on such exchange, or any suspension of trading of any securities of NiSource on any exchange or in the over-the-counter market; (v) any banking moratorium declared by U.S. Federal or New York authorities; (vi) any major disruption of settlements of securities or clearance services in the United States or (vii) any attack on outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of the Representatives, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the public offering or the sale of and payment for the Securities.

(d) Opinion and 10b-5 Statement of Counsel for the Company. The Representatives shall have received an opinion, dated the Closing Date and the settlement date, if any, of Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for NiSource, in form and substance reasonably satisfactory to the Representatives.

(e) Opinion of Internal Counsel for the Company. The Representatives shall have received an opinion, dated the Closing Date and the settlement date, if any, of internal counsel for NiSource, to the effect that:

(i) The descriptions in the Registration Statement and in the Pricing Disclosure Package and the Final Supplemental Prospectus of any legal and governmental proceedings insofar as such statements purport to constitute summaries of matters of law and legal conclusions with respect thereto, are correct in all material respects; and such counsel does not know of any legal or governmental proceedings pending to which the Company or any Subsidiary is a party or to which any of their respective properties is subject that are required to be described in the Registration Statement, the Pricing Disclosure Package or the Final Supplemental Prospectus and are not so described;

(ii) The documents incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Final Supplemental Prospectus, when they were filed with the Commission, appeared on their face to have complied in all material respects with the applicable provisions of the 1934 Act and the rules and regulations of the Commission thereunder; and



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(iii) To the knowledge of such counsel, except as disclosed in the Pricing Disclosure Package and the Final Supplemented Prospectus, there are no pending or threatened actions, suits, proceedings or investigations against or affecting NiSource or any Subsidiary or any of their respective properties, assets or operations that could reasonably be expected to, individually or in the aggregate, materially and adversely affect the ability of NiSource to perform its obligations under this Agreement or which could be reasonably be expected to have a Material Adverse Effect.

(f) Opinion and 10b-5 Statement of Counsel for the Underwriters. The Representatives shall have received from Davis Polk & Wardwell LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and the settlement date, if any, with respect to the incorporation of NiSource, the validity of the Securities, the Registration Statement, the Pricing Disclosure Package, the Final Supplemented Prospectus and other related matters as the Representatives may require, and NiSource shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(g) Officers' Certificate. The Representatives shall have received a certificate, dated the Closing Date and the settlement date, if any, of the President or any Vice President and a principal financial or accounting officer of NiSource in which such officers, to the best of their knowledge after reasonable investigation, shall state that the representations and warranties of NiSource in this Agreement are true and correct in all material respects, that NiSource has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date, that no stop order suspending the effectiveness of the Registration Statement or of any part thereof has been issued and no proceedings for that purpose have been instituted or are contemplated by the Commission and that, subsequent to the date of the most recent financial statements in the Pricing Disclosure Package and the Final Supplemented Prospectus, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of NiSource and the Subsidiaries taken as a whole except as set forth in or contemplated by the Pricing Disclosure Package and the Final Supplemented Prospectus.

(h) Bring-Down Comfort Letter. The Representatives shall have received a letter, dated the Closing Date and the settlement date, if any, of Deloitte & Touche LLP which meets the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than two days prior to the Closing Date for the purposes of this subsection.

(i) Purchase Contract and Pledge Agreement. The Representatives shall have received a counterpart of the Purchase Contract and Pledge Agreement that shall have been executed and delivered by a duly authorized officer of the Company.

(j) DTC. The Securities shall be eligible for clearance and settlement through DTC.

(k) Listing. The Company shall have applied for listing of the Corporate Units and the Common Stock issuable upon settlement of the Purchase Contracts and the Mandatory Convertible Preferred Securities on the Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives. The Maximum Number of Purchase Contract Securities and the Maximum Number of Underlying Securities shall have been approved for listing on the Stock Exchange, subject to official notice of issuance.

(l) Certificate of Designations. The Certificate of Designations shall have been filed on or before the Closing Date with the Secretary of State of the State of Delaware.

(m) Lock-up Agreement. At the Applicable Time, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit B hereto from each member of the board of directors of the Company and each "officer" for purposes of Section 16(a) of the 1934 Act and Rule 16a-1(f) promulgated thereunder.

(n) Certificate of the Chief Financial Officer. The Company shall have furnished to the Representatives, at each of the Applicable Time, the Closing Date and any settlement date, as applicable, a certificate signed by the Company's Chief Financial Officer, dated the date of this Agreement, the Closing Date and any such settlement date, as applicable, with respect to certain financial information contained in the Pricing Disclosure Package, the Final Supplement Prospectus and any supplements or amendments thereto, providing "management comfort" with respect to such information.

NiSource agrees to furnish the Representatives with such conformed copies of such opinions, certificates, letters and documents as the Representatives reasonably request. The Representatives may in their sole discretion waive on behalf of the Underwriters compliance with any conditions to the obligations of the Underwriters under this Agreement.

#### 7. Indemnification and Contribution.

(a) Indemnification of the Underwriters. NiSource will indemnify and hold harmless each Underwriter, its partners, directors, officers, agents, affiliates and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the 1934 Act, against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Registration Statement, the Basic Prospectus, the Pricing Prospectus, any Permitted Free Writing Prospectus or the Final Supplemented Prospectus, or any amendment or supplement thereto, or any free writing prospectus used by NiSource other than a Permitted Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that NiSource will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to NiSource by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information: third sentence of the third paragraph, the fourth paragraph, the eleventh paragraph, the twelfth paragraph and the thirteenth paragraph, in each case, under the caption "Underwriting" in each of the Preliminary Prospectus Supplement and the Final Supplemented Prospectus (collectively, the "**Underwriter Information**").

(b) Indemnification of the Company. Each Underwriter will severally and not jointly indemnify and hold harmless NiSource, its directors and officers and each person, if any, who controls NiSource within the meaning of Section 15 of the Act or Section 20 of the 1934 Act, against any losses, claims, damages or liabilities to which NiSource may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, the Basic Prospectus, the Pricing Prospectus, any Permitted Free Writing Prospectus or the Final Supplemented Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to NiSource by such Underwriter through the Representatives, if any, specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by NiSource in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, it being understood and agreed that the only such information furnished by any Underwriter consists of the Underwriter Information.

(c) Notice and Procedures. Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced through the forfeiture of substantive rights or defenses by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action 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 (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) Contribution and Limitation on Liability. If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by NiSource on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of NiSource on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by NiSource on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by NiSource bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault 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 NiSource on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter 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 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) Non-Exclusive Remedies. The obligations of NiSource under this Section shall be in addition to any liability which NiSource may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each director of NiSource, to each officer of NiSource who has signed the Registration Statement and to each person, if any, who controls NiSource within the meaning of the Act.

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8. Default of Underwriters. If any Underwriter or Underwriters default at the Closing Date in their obligations to purchase any of the Securities under this Agreement and the aggregate number of Securities that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of Securities to be purchased at the Closing Date, the Representatives may make arrangements satisfactory to the Company for the purchase of such Securities by other persons, including any of the Underwriters, but if no such arrangements are made by the Closing Date, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments under this Agreement, to purchase the Securities that such defaulting Underwriters agreed but failed to purchase. If any Underwriter or Underwriters so default and the aggregate number of Securities with respect to which such default or defaults occur exceeds 10% of the total number of Securities shares to be purchased and arrangements satisfactory to the Representatives and the Company for the purchase of such Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 9. As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

9. Survival of Certain Representations and Obligations. The respective indemnities, agreements, representations, warranties and other statements of NiSource or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, NiSource or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Securities. If this Agreement is terminated pursuant to Section 8 or if for any reason the purchase of the Securities by the Underwriters is not consummated, NiSource shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of NiSource and the Underwriters pursuant to Section 7 shall remain in effect. If the purchase of the Securities by the Underwriters is not consummated for any reason other than solely because of the termination of this Agreement pursuant to Section 8 or the occurrence of any event specified in clauses (iii), (iv) (other than a suspension with respect to NiSource's securities not part of a general suspension), (v), (vi) or (vii) of Section 6(c), NiSource will reimburse the Underwriters for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Securities.

10. Absence of Fiduciary Relationship. NiSource acknowledges and agrees that (i) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between NiSource, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith each Underwriter is acting as a principal and not the agent or fiduciary of NiSource and (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of NiSource with respect to the offering of the Securities pursuant to this Agreement or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising NiSource on other matters) or any other obligations to NiSource with respect to the offering of the Securities pursuant to this Agreement or the process leading thereto, except the obligations expressly set forth herein.

11. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives c/o Goldman Sachs & Co. LLC, Attention: Registration Department, 200 West Street, New York, New York 10282; c/o J.P. Morgan Securities LLC, 383 Madison Avenue, New York, NY 10179, Attention: Equity Syndicate Desk; and c/o Wells Fargo Securities, LLC at 500 West 33rd Street, New York, New York 10001, Attention: Equity Syndicate Department (fax: (212) 214-5918). Notices to the Company will be mailed, delivered or telegraphed and confirmed to it at 801 East 86th Avenue, Merrillville, Indiana 46410, Attention: Randy Hulen, with a copy to Amber Banks, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004.

12. Successors. This Agreement will inure to the benefit of and be binding upon NiSource and the Underwriters and their respective successors and the officers and directors and controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder.

13. Representation of Underwriters. The Representatives will act for the several Underwriters in connection with the financing described in this Agreement, and any action under this Agreement taken by the Representatives jointly will be binding upon all the Underwriters.

14. Counterparts. This Agreement or any document to be signed in connection with this Agreement may be executed in one or more counterparts by manual, facsimile or electronic signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The words “execution,” “signed,” “delivery,” and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

15. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

16. Submission to Jurisdiction. NiSource hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

17. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter 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 Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter 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.

(c) For purposes of this Section 20, 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.

[SIGNATURE PAGE FOLLOWS]

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If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

NISOURCE INC.

By: /s/ Randy G. Hulen

Name: Randy G. Hulen

Title: Vice President, Investor Relations and Treasurer

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Accepted: As of the date first written above

GOLDMAN SACHS & CO. LLC

By: /s/ Mike Voris

Name: Mike Voris

Title: Partner

J.P. MORGAN SECURITIES LLC

By: /s/ Santosh Sreenivasan

Name: Santosh Sreenivasan

Title: Managing Director

WELLS FARGO SECURITIES, LLC

By: /s/ Elizabeth Alvarez

Name: Elizabeth Alvarez

Title: Managing Director

As Representatives of the several Underwriters

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**Schedule I**

<b><u>Underwriters</u></b>	<b>Total Number of Firm Corporate Units to be Purchased</b>
Goldman Sachs & Co. LLC	4,633,029
J.P. Morgan Securities LLC	1,218,463
Wells Fargo Securities, LLC	1,218,463
Barclays Capital Inc.	143,349
BofA Securities, Inc.	71,674
Citigroup Global Markets Inc.	71,674
Credit Suisse Securities (USA) LLC	71,674
MUFG Securities Americas Inc.	71,674
<b>Total</b>	<b>7,500,000</b>

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**Schedule II**

**Pricing Disclosure Package:** Includes:

1. Prospectus dated November 1, 2019
2. Preliminary Prospectus Supplement dated April 12, 2021 (which shall be deemed to include documents incorporated by reference)
3. Permitted Free Writing Prospectus
  - a) Pricing Term Sheet attached hereto as Exhibit A
  - b) Free Writing Prospectus filed with the Securities and Exchange Commission on April 13, 2021

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**EXHIBIT A**

**Free Writing Prospectus Filed Pursuant to Rule 433  
To Prospectus dated November 1, 2019  
Preliminary Prospectus Supplement dated April 12, 2021  
Registration Statement File No. 333-234422**

**Final Term Sheet dated April 13, 2021  
7,500,000 Equity Units  
(initially consisting of 7,500,000 Corporate Units)**



**NiSource Inc.  
Equity Units**

*The information in this pricing term sheet relates only to the offering of Equity Units (the "Equity Units Offering") and should be read together with (i) the preliminary prospectus supplement dated April 12, 2021 relating to the Equity Units Offering, including the documents incorporated by reference therein, and (ii) the related base prospectus dated November 1, 2019, each filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended, Registration Statement No. 333-234422. Terms used but not defined in this final term sheet have the meanings given to them in the preliminary prospectus supplement. For purposes of this term sheet, "we," "us," "our," or "Company" refers to NiSource Inc., and not any of its subsidiaries.*

Company	NiSource Inc.
Company Common Stock Ticker	The New York Stock Exchange "NI"
Trade Date	April 14, 2021
Closing Price of Our Common Stock on The New York Stock Exchange on April 13, 2021	\$24.51
Settlement Date	April 19, 2021 (T+3)
<b><u>Equity Units</u></b>	
Equity Units	Each Equity Unit will have a stated amount of \$100 and will initially be a "Corporate Unit" consisting of a purchase contract issued by us and, initially, a 1/10th, or 10%, undivided beneficial ownership in one share of Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share, issued by us, which we refer to as "Mandatory Convertible Preferred Stock."
Number of Equity Units Offered	7,500,000 (or a total of 8,625,000 if the underwriters exercise their over-allotment option in full).
Initial Price to Public	\$100 per Equity Unit, <i>plus</i> accrued and unpaid contract adjustment payments, if any, from April 19, 2021.

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**Purchase Contracts**

Purchase Contracts	Unless early settled as described in the preliminary prospectus supplement, each purchase contract obligates holders to purchase from us, and obligates us to sell, on December 1, 2023, for a price of \$100, a number of newly-issued shares of our common stock equal to the settlement rate, as described under “Description of the Purchase Contracts—Purchase of Common Stock” in the preliminary prospectus supplement.
Reference Price	\$24.51 (the closing price of our common stock on The New York Stock Exchange on April 13, 2021).
Maximum Settlement Rate	4.0800 shares of our common stock (subject to adjustment in certain circumstances).
Contract Adjustment Payments	Payable quarterly in arrears on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2021 at a rate per year of 7.75% on the stated amount of \$100 per purchase contract, subject to our right to defer contract adjustment payments, as described in the preliminary prospectus supplement. If any date on which contract adjustment payments are to be made is not a business day, then payment of the contract adjustment payments payable on that date will be made on the next succeeding day that is a business day and no interest or payment will be paid in respect of the delay, if any. Contract adjustment payments will be paid in cash, shares of our common stock or a combination thereof, at our election.
Deferred Contract Adjustment Payments	Any deferred contract adjustment payments will accrue additional contract adjustment payments at the rate of 7.75% per year until paid, compounded quarterly, to, but excluding, the payment date.
Early Settlement of the Purchase Contracts at Your Option	A holder of Corporate Units or Treasury Units may settle the related purchase contracts at any time prior to 4:00 p.m., New York City time, on the scheduled trading day immediately preceding the first day of the market value averaging period (as defined under “Description of the Purchase Contracts—Purchase of Common Stock” in the preliminary prospectus supplement), subject to certain exceptions and conditions described under “Description of the Purchase Contracts—Early Settlement” in the preliminary prospectus supplement. Such early settlement may only be made in integral multiples of 10 Corporate Units or 10 Treasury Units, as applicable. Upon early settlement of any purchase contracts, except following a fundamental change as described below, we will deliver a number of newly-issued shares of our common stock determined over a 40 consecutive trading day period beginning on the trading day immediately following the day you exercise this right, which we refer to as the “early settlement averaging period.” The number of shares of our common stock we are obligated to deliver will equal 85% of the number of shares of our common stock that would be deliverable for each purchase contract as described in “Description of the Purchase Contracts—Purchase of Common Stock” in the preliminary prospectus supplement as if the applicable market value were the average of the daily VWAPs of our common stock during the early settlement averaging period.

Early Settlement Upon a Fundamental Change

Upon the occurrence of a fundamental change, you will have the right, subject to certain exceptions and conditions described in the preliminary prospectus supplement, to settle your purchase contracts early at the settlement rate determined as if the applicable market value (as defined under “Description of the Purchase Contracts—Purchase of Common Stock” in the preliminary prospectus supplement) equaled the stock price in the fundamental change (as described under “Description of the Purchase Contracts—Early Settlement Upon a Fundamental Change” in the preliminary prospectus supplement), *plus* an additional make-whole amount of shares of our common stock determined as described under “Description of the Purchase Contracts—Early Settlement Upon a Fundamental Change” in the preliminary prospectus supplement.

The following table sets forth the number of make-whole shares of our common stock per purchase contract that would apply at various stock prices and effective dates (all as defined in the preliminary prospectus supplement):

**Stock Price**

<b>Effective Date</b>	<b>\$ 10.00</b>	<b>\$ 12.00</b>	<b>\$ 14.00</b>	<b>\$ 16.00</b>	<b>\$ 18.00</b>	<b>\$ 24.51</b>	<b>\$ 27.50</b>	<b>\$ 28.80</b>	<b>\$ 35.00</b>	<b>\$ 40.00</b>	<b>\$ 45.00</b>	<b>\$ 55.00</b>	<b>\$ 60.00</b>
April 19, 2021	1.0043	0.8289	0.6948	0.5789	0.4695	0.0000	0.4537	0.5697	0.3978	0.3133	0.2588	0.1955	0.1753
December 1, 2021	0.7955	0.6575	0.5524	0.4600	0.3682	0.0000	0.3720	0.4880	0.3214	0.2462	0.2012	0.1524	0.1371
December 1, 2022	0.3904	0.3235	0.2746	0.2325	0.1850	0.0000	0.2202	0.3307	0.1684	0.1174	0.0951	0.0739	0.0670
December 1, 2023	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000

The actual stock price and effective date may not be set forth on the table, in which case:

- (1) if the actual stock price on the effective date is between two stock prices on the table or the actual effective date is between two effective dates on the table, the amount of make-whole shares of our common stock will be determined by a straight-line interpolation between the make-whole share amounts set forth for the two stock prices and the two effective dates on the table based on a 365-day year, as applicable;
- (2) if the stock price on the effective date exceeds \$60.00 per share of our common stock, subject to adjustment, then the make-whole share amount will be zero; and
- (3) if the stock price on the effective date is less than \$10.00 per share of our common stock, subject to adjustment, then the make-whole share amount will be determined as if the stock price equaled \$10.00, subject to adjustment, using straight-line interpolation, as described above, if the actual effective date is between two effective dates on the table.

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**Mandatory Convertible Preferred Stock**

Mandatory Convertible Preferred Stock	The Equity Units will include an aggregate of 750,000 shares (or 862,500 shares if the underwriters exercise their over-allotment option in full) of Mandatory Convertible Preferred Stock with a liquidation preference of \$1,000 per share. In connection with a successful remarketing of the Mandatory Convertible Preferred Stock, (a) dividends may become payable on the Mandatory Convertible Preferred Stock and/or (b) if the closing price of our common stock on the pricing date for a successful remarketing is less than or equal to the Initial Price (as defined below), the minimum conversion rate of the Mandatory Convertible Preferred Stock will be increased to an amount equal to \$1,000 <i>divided by</i> 117.5% of the closing price of our common stock on such date (rounded to the nearest ten-thousandth of a share), each as described under “Description of the Mandatory Convertible Preferred Stock—Terms of Remarketed Mandatory Convertible Preferred Stock” in the preliminary prospectus supplement.
No Dividends on Mandatory Convertible Preferred Stock	The Mandatory Convertible Preferred Stock initially will not bear any dividends and the liquidation preference of the Mandatory Convertible Preferred Stock will not accrete.
Dividends Following a Successful Remarketing	Following a successful remarketing of the Mandatory Convertible Preferred Stock, dividends may become payable on the Mandatory Convertible Preferred Stock at a dividend rate to be determined in connection with such successful remarketing, in which case the Mandatory Convertible Preferred Stock will bear dividends at such rate and become payable when, as and if declared by our board of directors, on March 1, 2024 (or, at our election in consultation with the remarketing agent in connection with a successful optional remarketing, on each of December 1, 2023 and March 1, 2024). Dividends, if any, on the Mandatory Convertible Preferred Stock will be paid in cash, shares of our common stock or a combination thereof, at our election.
Remarketing Failure	As more fully described under “Description of the Mandatory Convertible Preferred Stock—Mandatory Conversion” and “Description of the Mandatory Convertible Preferred Stock—Remarketing the Mandatory Convertible Preferred Stock” in the preliminary prospectus supplement, if a successful remarketing of the Mandatory Convertible Preferred Stock has not occurred on or prior to the last day of the final remarketing period (as described in the preliminary prospectus supplement, a “Remarketing Failure”), with respect to any shares of Mandatory Convertible Preferred Stock that remain outstanding following the purchase contract settlement date, you will not receive any shares of our common stock upon automatic conversion of any such shares of Mandatory Convertible Preferred Stock on the Mandatory Conversion Date.
Mandatory Conversion Date	The second business day immediately following the last trading day of the 40 consecutive trading day period beginning on, and including, the 41st scheduled trading day immediately preceding March 1, 2024. The Mandatory Conversion Date is expected to be March 1, 2024.
Initial Price	Approximately \$24.5100, which is equal to \$1,000 <i>divided by</i> the Maximum Conversion Rate (as defined below).
Threshold Appreciation Price	Approximately \$28.7993, which represents an approximately 17.5% appreciation over the Reference Price and is equal to \$1,000 <i>divided by</i> the Minimum Conversion Rate (as defined below).

Floor Price	\$8.58 (approximately 35% of the Initial Price), subject to adjustment as described in the preliminary prospectus supplement.
Conversion Rate per Share of Mandatory Convertible Preferred Stock	<p>Unless a Remarketing Failure has occurred, upon conversion on the Mandatory Conversion Date, each outstanding share of the Mandatory Convertible Preferred Stock, unless previously converted, will automatically convert into a number of shares of our common stock equal to not more than 40.7997 shares of our common stock and not less than 34.7231 shares of our common stock, (respectively, the “Maximum Conversion Rate” and “Minimum Conversion Rate”), depending on the mandatory settlement value (as defined in the preliminary prospectus supplement) of our common stock, as described below and subject to certain anti-dilution adjustments. If a Remarketing Failure has previously occurred, with respect to any shares of Mandatory Convertible Preferred Stock that remain outstanding following the purchase contract settlement date, no shares of our common stock will be delivered upon automatic conversion of such shares and each such share of Mandatory Convertible Preferred Stock will be automatically transferred to us on the Mandatory Conversion Date without any payment of cash or shares of our common stock thereon.</p>

The following table illustrates the conversion rate per share of the Mandatory Convertible Preferred Stock, subject to certain anti-dilution adjustments described in the preliminary prospectus supplement, based on the mandatory settlement value of our common stock, and assuming a Remarketing Failure has not occurred:

Mandatory settlement value of our common stock	Conversion rate (number of shares of our common stock issuable upon conversion of each share of the Mandatory Convertible Preferred Stock)
Greater than the Threshold Appreciation Price	34.7231 shares of common stock
Equal to or less than the Threshold Appreciation Price but greater than or equal to the Initial Price	Between 34.7231 and 40.7997 shares of common stock, determined by <i>dividing</i> \$1,000 by the mandatory settlement value
Less than the Initial Price	40.7997 shares of common stock

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Early Conversions	<p>In connection with a successful remarketing of the Mandatory Convertible Preferred Stock, the Minimum Conversion Rate of the Mandatory Convertible Preferred Stock may be increased as described under “Description of the Mandatory Convertible Preferred Stock—Terms of Remarketed Mandatory Convertible Preferred Stock” in the preliminary prospectus supplement.</p> <p>Holders of Corporate Units do not have the right to convert their ownership interests in the Mandatory Convertible Preferred Stock that are a part of such Corporate Units into shares of our common stock. Only shares of Mandatory Convertible Preferred Stock that are not a part of Corporate Units may be converted. Holders of such separate shares of Mandatory Convertible Preferred Stock that are not a part of Corporate Units may convert their shares at their option prior to December 1, 2023 only upon the occurrence of a fundamental change. On and after December 1, 2023, and unless there has been a Remarketing Failure, holders of shares of Mandatory Convertible Preferred Stock may, at their option, convert their shares early, all as described in the preliminary prospectus supplement.</p>
Adjusted Conversion Rate Upon Fundamental Change	<p>There will be no make-whole amount of shares of our common stock or increase to the conversion rate for conversions of the Mandatory Convertible Preferred Stock in connection with a fundamental change, except for the limited circumstance where the stock price in connection with such fundamental change is less than \$24.51 per share of our common stock (subject to adjustment as set forth in the preliminary prospectus supplement), which initially equals the Initial Price of the Mandatory Convertible Preferred Stock. Under such limited circumstance, the conversion rate will be determined as described under “Description of the Mandatory Convertible Preferred Stock—Conversion at the Option of the Holder upon Fundamental Change” in the preliminary prospectus supplement.</p> <p>Notwithstanding the foregoing, in no event will the conversion rate exceed 81.5994 shares of our common stock per share of Mandatory Convertible Preferred Stock, which is equal to the \$1,000 liquidation preference <i>divided by</i> 50% of the Initial Price (subject to adjustment as set forth in the preliminary prospectus supplement).</p>
Underwriting Discount	\$2.616 per Equity Unit / \$19,620,000 total (excluding the underwriters’ over-allotment option).
Joint Book-Running Managers	Goldman Sachs & Co. LLC J.P. Morgan Securities LLC Wells Fargo Securities, LLC
Senior Co-Manager	Barclays Capital Inc.
Co-Managers	BofA Securities, Inc. Citigroup Global Markets Inc. Credit Suisse Securities (USA) LLC MUFG Securities Americas Inc.

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Use of Proceeds	<p>We expect to receive net proceeds from the offering of approximately \$730.4 million (or approximately \$839.9 million if the underwriters exercise their over-allotment option in full), after deducting the underwriting discounts but before deducting our other fees and expenses related to the offering.</p> <p>We intend to use the net proceeds from the offering for renewable generation investments and general corporate purposes, including additions to working capital and repayment of existing indebtedness. See “Use of Proceeds” in the preliminary prospectus supplement.</p>
Listing	<p>We intend to apply for listing of the Corporate Units on The New York Stock Exchange under the symbol “NIMC.”</p>
CUSIP for the Corporate Units	65473P 121
CUSIP for the Treasury Units	65473P 139
CUSIP for the Cash Settled Units	65473P 147
CUSIP for the Mandatory Convertible Preferred Stock	65473P 857

The information in this communication supersedes the information in the preliminary prospectus supplement to the extent it is inconsistent with such information. Other information presented in the preliminary prospectus supplement is deemed to have changed to the extent affected by the changes described herein.

The underwriters expect to deliver the Corporate Units in book-entry form only through the facilities of The Depository Trust Company against payment in New York, New York on or about April 19, 2021, which is three business days following the initial trade date of the Corporate Units (such settlement cycle being herein referred to as “T+3”). You should note that the trading of the Corporate Units on the initial trade date may be affected by the T+3 settlement. See “Underwriting” in the preliminary prospectus supplement.

The issuer has filed a registration statement, including a prospectus and a preliminary prospectus supplement, with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus and the preliminary prospectus supplement in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and the offering. You may get these documents for free by visiting EDGAR on the SEC website at [www.sec.gov](http://www.sec.gov). Alternatively, copies may be obtained from (i) Goldman Sachs & Co. LLC, Attn: Prospectus Department, 200 West Street, New York, NY 10282, by phone at (866) 471-2526 or by email at [prospectus-ny@ny.email.gs.com](mailto:prospectus-ny@ny.email.gs.com), (ii) J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by telephone at (866) 803-9204 or by email at [prospectus-eq\\_fi@jpmchase.com](mailto:prospectus-eq_fi@jpmchase.com) or (iii) Wells Fargo Securities, LLC, at 500 West 33rd Street, New York, New York, 10001, Attn: Equity Syndicate Department, by calling toll free 1-800-326-5897, or by e-mail at [cmclientsupport@wellsfargo.com](mailto:cmclientsupport@wellsfargo.com).

**ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.**



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**EXHIBIT B**

**Lock-Up Agreement**

**NiSource Inc.  
Public Offering of Corporate Units**

April \_\_, 2021

Goldman Sachs & Co. LLC  
J.P. Morgan Securities LLC  
Wells Fargo Securities, LLC  
As Representatives of the several Underwriters,

c/o Goldman Sachs & Co. LLC  
200 West Street  
New York, New York 10282

c/o J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179

c/o Wells Fargo Securities, LLC  
550 South Tryon Street, 5th Floor  
Charlotte, North Carolina 28202

Ladies and Gentlemen:

This letter is being delivered to you in connection with the proposed Underwriting Agreement (the “Underwriting Agreement”), between NiSource Inc., a Delaware corporation (the “Company”), and you as representatives (the “Representatives”) of a group of Underwriters named therein, relating to an underwritten public offering of Corporate Units (the “Public Offering”).

In order to induce you and the other Underwriters to enter into the Underwriting Agreement, the undersigned will not, without the prior written consent of Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, offer, sell, contract to sell, pledge or otherwise dispose of, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned), directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period commencing on the date of the Underwriting Agreement and ending 45 days after the Applicable Time as defined in the Underwriting Agreement. The foregoing sentence shall not apply to:

(a) transactions involving the disposition of not more than 100,000 shares of common stock of the Company, par value \$0.01 per share (“Common Stock”);

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(b) transactions relating to shares of Common Stock, or other securities acquired in open market transactions after the completion of the Public Offering;

(c) transfers of shares of Common Stock or Common Stock equivalents as a bona fide gift or by will or intestacy, including transfers to a trust where the beneficiaries of the trust are drawn solely from a group consisting of the undersigned and immediate family members of the undersigned; provided that (i) each transferee of shares of Common Stock or Common Stock equivalents that is not a not-for-profit or religious organization executes and delivers to the Underwriters a duplicate form of this lock-up letter and (ii) no party, including the undersigned, shall be required to, nor shall it voluntarily, file a report under Section 16(a) of the Securities Exchange Act of 1934, as amended, in connection with such transfer or distribution (other than a filing on Form 5 made after the expiration of the restricted period referred to in the foregoing sentence);

(d) transactions pursuant to a trading plan established pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, in existence as of the date of the final prospectus relating to the Public Offering (the "Prospectus");

(e) the creation of a trading plan established pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended; provided that no transactions are made pursuant to such plan until the expiration of the restricted period referred to in the foregoing sentence; or

(f) the exercise of options to purchase shares of Common Stock or sale of shares of Common Stock to satisfy the applicable aggregate exercise price (and applicable withholding taxes) required to be paid upon such exercise or upon vesting of restricted stock awards or units.

An "immediate family member" of a person means the spouse, lineal descendants, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law and sister-in-law of such person.

If for any reason the Underwriting Agreement shall be terminated prior to the Closing Date (as defined in the Underwriting Agreement), the agreement set forth above shall likewise be terminated.

The undersigned acknowledges and agrees that none of the Underwriters has made any recommendation or provided any investment or other advice to the undersigned with respect to this lock-up letter or the subject matter hereof, and the undersigned has consulted its own legal, accounting, financial, regulatory, tax and other advisors with respect to this lock-up letter and the subject matter hereof to the extent the undersigned has deemed appropriate.

*[Signature Page Follows]*

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Yours very truly,

\_\_\_\_\_  
Exact Name of Shareholder

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

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**Exhibit 3.1**

**CERTIFICATE OF DESIGNATIONS OF  
SERIES C MANDATORY CONVERTIBLE PREFERRED STOCK  
PAR VALUE \$0.01 PER SHARE  
OF  
NISOURCE INC.**

Pursuant to Section 151 of the Delaware General Corporation Law (as amended, supplemented or restated from time to time, the “**DGCL**”), NiSource Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Section 103 of the DGCL, DOES HEREBY CERTIFY:

That, the Amended and Restated Certificate of Incorporation of the Corporation, as filed with the Secretary of State of Delaware (as amended, restated, supplemented or otherwise modified from time to time, the “**Certificate of Incorporation**”), authorizes the issuance of six hundred twenty million (620,000,000) shares of capital stock of the Corporation, of which six hundred million (600,000,000) shall be common stock, par value one cent (\$0.01) per share (the “**Common Stock**”), and twenty million (20,000,000) shall be Preferred Stock, par value one cent (\$0.01) per share (“**Preferred Stock**”);

That, subject to the provisions of the Certificate of Incorporation, the board of directors of the Corporation (the “**Board of Directors**”) is authorized to issue from time to time the Preferred Stock in one or more series and to fix by the resolution or resolutions the number of shares to be included in such series, the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of such series to the full extent permitted by the Certificate of Incorporation and the DGCL;

That, pursuant to the authority conferred upon the Board of Directors by the Certificate of Incorporation, the Board of Directors by resolution adopted on March 16, 2021: (i) authorized and established a new series of mandatory convertible preferred stock, par value \$0.01 per share, designated as the Series C Mandatory Convertible Preferred Stock having a per share liquidation preference of \$1,000 and ranking on parity with the Corporation’s Series A Preferred Stock, Series B Preferred Stock and Series B-1 Preferred Stock and (ii) designated a Pricing Committee (the “**Pricing Committee**”) of the Board of Directors and conferred upon the Pricing Committee the power and authority of the Board of Directors to approve the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the Series C Mandatory Convertible Preferred Stock; and

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That, the Pricing Committee, on April 13, 2021, pursuant to the authority conferred upon the Pricing Committee by the Board of Directors, adopted the following resolutions:

RESOLVED, that, pursuant to the authority vested in the Pricing Committee of the Board of Directors of the Corporation in accordance with the provisions of the Certificate of Incorporation and the provisions of Section 141(c) and 151 of the DGCL, the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the shares of Series C Mandatory Convertible Preferred Stock, shall be as set forth in this certificate of designations (the “**Certificate of Designations**”) as follows:

- (1). *Number and Designation.* The shares of such series of Preferred Stock shall be designated as “Series C Mandatory Convertible Preferred Stock” (the “**Mandatory Convertible Preferred Stock**”). The number of authorized shares constituting the Mandatory Convertible Preferred Stock shall be 862,500. That number from time to time may be increased (but not in excess of the total number of authorized shares of Preferred Stock) or decreased (but not below the number of shares of Mandatory Convertible Preferred Stock then outstanding) by further resolution duly adopted by the Board of Directors and by the filing of a certificate pursuant to the provisions of the DGCL stating that such increase or decrease, as applicable, has been so authorized. The Corporation shall not have the authority to issue fractional shares of Mandatory Convertible Preferred Stock.
- (2). *Ranking.* The Mandatory Convertible Preferred Stock will rank, with respect to dividend rights or distribution rights upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, as applicable, as follows:
- (a) senior to (i) the Common Stock and (ii) any other class or series of capital stock of the Corporation established after the first original issue date of shares of the Mandatory Convertible Preferred Stock, the terms of which do not expressly provide that such class or series ranks on parity with the Mandatory Convertible Preferred Stock or senior to the Mandatory Convertible Preferred Stock as to dividend rights or distribution rights upon the Corporation’s liquidation, winding-up or dissolution, as the case may be (collectively, including the Common Stock, “**Junior Stock**”);
  - (b) on parity with (i) the Series A Preferred Stock, the Series B Preferred Stock and the Series B-1 Preferred Stock of the Corporation and (ii) any other class or series of capital stock of the Corporation established after the first original issue date of shares of the Mandatory Convertible Preferred Stock the terms of which expressly provide that such class or series will rank on parity with the Mandatory Convertible Preferred Stock as to dividend rights or distribution rights upon the Corporation’s liquidation, winding-up or dissolution, as the case may be (collectively, “**Parity Stock**”); and
  - (c) junior to any other class or series of capital stock of the Corporation established after the first original issue date of shares of the Mandatory Convertible Preferred Stock the terms of which expressly provide that such class or series will rank senior to the Mandatory Convertible Preferred Stock as to dividend rights or distribution rights upon the Corporation’s liquidation, winding-up or dissolution, as the case may be (collectively, “**Senior Stock**”).
- (3). *Certain Definitions.* As used in this Certificate of Designations, the following terms shall have the meanings given to them in this Section 3. Any capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Certificate of Incorporation, unless the context otherwise requires.

“**ADRs**” shall have the meaning assigned to it in Section 12(a) hereof.

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“**Affiliate**” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agent Members**” shall have the meaning assigned to it in Section 17(b) hereof.

“**Applicable Ownership Interest in Mandatory Convertible Preferred Stock**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Applicable Remarketing Period**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Board of Directors**” has the meaning assigned to it in the preamble hereof, and shall include any duly authorized committee thereof.

“**Business Day**” means any day other than a Saturday or a Sunday or any other day on which banking institutions and trust companies in New York City, New York are authorized or required by law or executive order to remain closed.

“**Capital Stock**” of any Person means any and all shares, interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights, warrants or options to acquire an equity interest in such Person.

“**cash**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Certificate of Designations**” shall have the meaning assigned to it in the preamble hereof.

“**Certificate of Incorporation**” shall have the meaning assigned to it in the preamble hereof.

“**close of business**” means 5:00 p.m., New York City time.

“**Closing Sale Price**” per share of Common Stock means, on any date of determination, the closing sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “**Closing Sale Price**” shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the “**Closing Sale Price**” shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose.

“**Common Stock**” means common stock of the Corporation, par value \$0.01 per share, subject to Section 12 hereof.

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“**Compounded Dividends**” shall have the meaning assigned to it in Section 4(i) hereof.

“**Constituent Person**” means, in respect of any Reorganization Event, a Person with which the Corporation is consolidated or into which the Corporation is merged or which merged into the Corporation or to which the relevant sale or transfer was made, as the case may be, in connection with such Reorganization Event.

“**Contract Adjustment Payments**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Conversion Agent**” shall have the meaning assigned to it in Section 19(a) hereof.

“**Conversion Date**” means the Mandatory Conversion Date, the Fundamental Change Conversion Date or the Early Conversion Date, as applicable.

“**Corporate Unit**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Corporation**” shall have the meaning assigned to it in the preamble hereof, and shall include any successor to such Corporation.

“**Daily VWAP**” means, in respect of the Common Stock, for each relevant Trading Day, the per share volume weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NI <Equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading on the relevant Trading Day until the scheduled close of trading on the relevant Trading Day (or if such volume weighted average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Corporation).

“**Depository**” means DTC or its nominee or any successor depository designated by the Corporation.

“**Depository Participant**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**DGCL**” shall have the meaning assigned to it in the preamble hereof.

“**Dividend Blocker Provisions**” shall have the meaning assigned to it in Section 4(h) hereof.

“**Dividend Disbursing Agent**” shall have the meaning assigned to it in Section 15 hereof.

“**Dividend Increase Remarketing**” shall have the meaning assigned to it in Section 4(b) hereof.

“**Dividend Payment Date**” shall have the meaning assigned to it in Section 4(c) hereof.

“**Dividend Period**” means the period beginning on, and including, a Dividend Payment Date (or if no dividends have been paid on the Mandatory Convertible Preferred Stock, the Remarketing Settlement Date for a Dividend Increase Remarketing) to, but excluding, the next immediately succeeding Dividend Payment Date.



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“**Dividend Rate**” (x) prior to a Dividend Increase Remarketing, if any, means 0% and (y) following a Dividend Increase Remarketing, if any, shall have the meaning assigned to it in Section 4(b) hereof.

“**DTC**” means The Depository Trust Company, New York, New York.

“**Early Conversion**” shall have the meaning assigned to it in Section 9(c)(i) hereof.

“**Early Conversion Additional Conversion Amount**” shall have the meaning assigned to it in Section 9(c)(ii)(A) hereof.

“**Early Conversion Average Price**” means the arithmetic average of the Daily VWAPs per share of Common Stock over the Early Conversion Settlement Period.

“**Early Conversion Date**” shall have the meaning assigned to it in Section 9(e)(ii) hereof.

“**Early Conversion Settlement Period**” means the 40 consecutive Trading Day period commencing on, and including, the 41st Scheduled Trading Day immediately preceding the Early Conversion Date.

“**Effective Date**” means, in respect of any Fundamental Change, the date on which such Fundamental Change occurs or becomes effective.

“**Ex-Dividend Date**” when used with respect to any issuance or distribution on the Common Stock or any other security, means the first date on which the Common Stock or such other security, as applicable, trades, regular way, on the principal U.S. securities exchange or market on which the Common Stock or such other security, as applicable, is listed or traded at that time, without the right to receive the issuance or distribution in question, from the issuer of such security or, if applicable, from the seller of the Common Stock or such security, as the case may be, on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Exchange Property**” shall have the meaning assigned to it in Section 12(a) hereof.

“**Exchange Property Unit**” means, in respect of any Reorganization Event, the kind and amount of Exchange Property receivable in such Reorganization Event (without any interest thereon, and without any right to dividends or distribution thereon which have a record date that is prior to the date on which Holders become holders of record of the underlying shares of Common Stock) per share of Common Stock by a holder of Common Stock that is not a Constituent Person, or an Affiliate of a Constituent Person, to the extent such Reorganization Event provides for different treatment of Common Stock held by the Constituent Person and/or the Affiliates of the Constituent Person, on the one hand, and non-Affiliates of a Constituent Person, on the other hand.

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“**Expiration Date**” shall have the meaning assigned to it in Section 10(a)(v) hereof.

“**Five-Day Average Price**” means the arithmetic average of the Daily VWAPs per share of Common Stock over the five consecutive Trading Day period ending on the second Trading Day immediately preceding the applicable Dividend Payment Date or other date in respect of which dividends are being paid.

“**Fixed Conversion Rates**” means the Maximum Conversion Rate and the Minimum Conversion Rate.

“**Floor Price**” means \$8.58, which amount represents approximately 35% of the Initial Price, subject to adjustment in a manner inversely proportional to any anti-dilution adjustment to each Fixed Conversion Rate as set forth below in Section 10.

“**Fundamental Change**” means the occurrence after the Units are originally issued of any of the following:

- (a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of Common Stock representing more than 50% of the voting power of Common Stock;
- (b) (A) the Corporation is involved in a consolidation with or merger into any other Person, or any merger of another Person into the Corporation, or any other similar transaction or series of related transactions (other than a merger, consolidation or similar transaction that does not result in the conversion or exchange of outstanding shares of Common Stock), in each case, in which 90% or more of the outstanding shares of Common Stock are exchanged for or converted into cash, securities or other property, greater than 10% of the value of which consists of cash, securities or other property that is not (or will not be upon or immediately following the effectiveness of such consolidation, merger or other transaction) common stock listed on the New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors) or (B) the consummation of any sale, lease or other transfer in one transaction or a series of related transactions of all or substantially all of the Corporation’s consolidated assets to any Person other than one of the Corporation’s Subsidiaries;
- (c) the Common Stock ceases to be listed on at least one of the New York Stock Exchange, the Nasdaq Global Select Market and the Nasdaq Global Market (or any of their respective successors); or
- (d) the Corporation’s shareholders approve the Corporation’s liquidation, dissolution or termination.

“**Fundamental Change Company Notice**” shall have the meaning assigned to it in Section 9(d)(iii) hereof.

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“**Fundamental Change Conversion**” shall have the meaning assigned to it in Section 9(d)(i) hereof.

“**Fundamental Change Conversion Date**” shall have the meaning assigned to it in Section 9(e)(iii) hereof.

“**Fundamental Change Conversion Deadline**” shall have the meaning assigned to it in Section 9(d)(ii) hereof.

“**Fundamental Change Conversion Period**” means, in respect of any Fundamental Change, the period from the Effective Date of such Fundamental Change to, and including, the related Fundamental Change Conversion Deadline.

“**Fundamental Change Conversion Rate**” shall have the meaning assigned to it in Section 9(d)(i) hereof.

“**Fundamental Change Conversion Right**” shall have the meaning assigned to it in Section 9(d)(i) hereof.

“**Fundamental Change Early Settlement Date**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Fundamental Change Settlement Date**” means the date on which all conversions in exercise of the Fundamental Change Conversion Right shall be settled, which shall be the second Business Day immediately following the Fundamental Change Conversion Deadline.

“**Fundamental Change Settlement Price**” shall have the meaning assigned to it in Section 9(d)(i) hereof.

“**Global Preferred Share**” shall have the meaning assigned to it in Section 17(a) hereof.

“**Holder**” means each Person in whose name shares of Mandatory Convertible Preferred Stock are registered, who shall be treated by the Corporation and the Registrar as the absolute owner of those shares of Mandatory Convertible Preferred Stock for the purpose of making payment and settling conversions and for all other purposes.

“**Increased Minimum Conversion Rate**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Increased Rates**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Independent Shares**” means any (i) Separate Shares of Mandatory Convertible Preferred Stock and (ii) any shares of Mandatory Convertible Preferred Stock held on or after the occurrence of a Successful Remarketing.

“**Initial Dividend Threshold**” shall have the meaning assigned to it in Section 10(a)(iv) hereof.

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“**Initial Price**” means \$1,000 *divided by* the Maximum Conversion Rate, which quotient is initially equal to approximately \$24.5100.

“**Junior Stock**” shall have the meaning assigned to in Section 2(a) hereof.

“**Liquidation Dividend Amount**” shall have the meaning assigned to it in Section 6(a) hereof.

“**Liquidation Preference**” shall have the meaning assigned to it in Section 6(a) hereof.

“**Mandatory Averaging Period**” means the 40 consecutive Trading Day period commencing on, and including, the 41st Scheduled Trading Day immediately preceding March 1, 2024.

“**Mandatory Conversion**” shall have the meaning assigned to it in Section 7(a) hereof.

“**Mandatory Conversion Additional Conversion Amount**” shall have the meaning assigned to it in Section 7(c)(i) hereof.

“**Mandatory Conversion Date**” means the second Business Day immediately following the last Trading Day of the Mandatory Averaging Period.

“**Mandatory Conversion Rate**” shall have the meaning set forth in Section 7(b).

“**Mandatory Convertible Preferred Stock**” shall have the meaning assigned to it in Section 1 hereof.

“**Mandatory Settlement Value**” means the arithmetic average of the Daily VWAPs per share of Common Stock over the Mandatory Averaging Period.

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

“**Maximum Conversion Rate**” shall have the meaning set forth in Section 7(b)(iii) hereof.

“**Minimum Conversion Rate**” shall have the meaning set forth in Section 7(b)(i) hereof.

“**Nonpayment Event**” shall have the meaning assigned to it in Section 14(d) hereof.

“**Officer**” means the President, any Vice President, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller, the Corporate Secretary or any Assistant Corporate Secretary of the Corporation.

“**open of business**” means 9:00 a.m., New York City time.

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“**Optional Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Outstanding**” means, when used with respect to Mandatory Convertible Preferred Stock, as of any date of determination, all Mandatory Convertible Preferred Stock theretofore authenticated and delivered under this Certificate of Designations, except:

- (i) shares of Mandatory Convertible Preferred Stock automatically delivered to the Corporation in satisfaction of the relevant holder’s obligations under the Corporate Units, pursuant to the Purchase Contract and Pledge Agreement; and
- (ii) shares of Mandatory Convertible Preferred Stock as to which any consideration deliverable upon conversion thereof has been delivered pursuant to this Certificate of Designations (or, following a Remarketing Failure, that have been automatically transferred to the Corporation and retired pursuant to Section 7(a) hereof);

*provided* that, in determining whether the Holders have given any request, demand, authorization, direction, notice, consent or waiver or taken any other action hereunder, Mandatory Convertible Preferred Stock owned by the Corporation or its Affiliates shall be deemed not to be Outstanding, except that, in determining whether the Registrar shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Mandatory Convertible Preferred Stock which the Registrar has actual knowledge of being so owned shall be so disregarded.

“**Parity Stock**” shall have the meaning assigned to in Section 2(b) hereof.

“**Paying Agent**” shall have the meaning assigned to it in Section 19(a) hereof.

“**Permitted Distributions**” means any of the following:

- (i) purchases, redemptions or other acquisitions of Junior Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of current or former employees, officers, directors or consultants of the Corporation or any of its Subsidiaries;
- (ii) purchases of shares of Common Stock pursuant to a contractually binding requirement to buy Common Stock existing prior to the commencement of the first Dividend Period for which dividends on the Mandatory Convertible Preferred Stock are unpaid, including under a contractually binding stock repurchase plan;
- (iii) the purchase of, or the payment of cash in lieu of, fractional interests in Junior Stock (x) in connection with a bona fide acquisition of a business or (y) pursuant to the conversion or exchange provisions of such Junior Stock or securities convertible into or exchangeable for such Junior Stock;

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(iv) any declaration of a dividend on the Capital Stock of the Corporation in connection with the implementation of a shareholders rights plan designed to protect the Corporation against unsolicited offers to acquire its Capital Stock, or the issuance of Capital Stock of the Corporation under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto;

(v) dividends or distributions payable solely in Junior Stock, or warrants, options or rights to acquire such Junior Stock (other than any indebtedness, Senior Stock or Parity Stock), in each case, convertible into, exercisable for or exchangeable for Junior Stock; or

(vi) conversions of any Junior Stock into, or exchanges of any Junior Stock for, a class or series of other Junior Stock.

“**Person**” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity of whatever nature.

“**Preferred Stock**” shall have the meaning assigned to it in the preamble hereto.

“**Preferred Stock Directors**” shall have the meaning assigned to it in Section 14(d) hereof.

“**Prospectus Supplement**” means the preliminary prospectus supplement, dated April 12, 2021, relating to the Units.

“**Purchase Contract**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Purchase Contract and Pledge Agreement**” means the Purchase Contract and Pledge Agreement between the Corporation and U.S. Bank National Association, as purchase contract agent, collateral agent, custodial agent and securities intermediary, dated as of April 19, 2021.

“**Record Date**” means, with respect to the dividends payable on any Dividend Payment Date, the fifteenth day of the month immediately preceding the month in which the relevant Dividend Payment Date falls (whether or not a Business Day).

“**Record Holders**” shall have the meaning assigned to it in Section 4(c) hereof.

“**Registrar**” shall have the meaning assigned to it in Section 15 hereof.

“**Registration Statement**” means, in respect of any dividends on the Mandatory Convertible Preferred Stock payable in shares of Common Stock (in whole or in part), a registration statement under the Securities Act prepared by the Corporation covering, inter alia, the issuance of or resales of shares of Common Stock payable in respect of dividends on the Mandatory Convertible Preferred Stock pursuant to Section 4 and Section 5 hereof, in each case, including all exhibits thereto and the documents incorporated by reference in the prospectus contained in such registration statement, and any post-effective amendments thereto.

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“**Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Remarketing Agent(s)**” means any Remarketing Agent(s) appointed by the Corporation, pursuant to the Remarketing Agreement.

“**Remarketing Agreement**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Remarketing Date**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Remarketing Failure**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Remarketing Settlement Date**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Reorganization Event**” shall have the meaning assigned to it in Section 12(a).

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day.

“**Senior Stock**” shall have the meaning assigned to in Section 2(c) hereof.

“**Separate Shares of Mandatory Convertible Preferred Stock**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Spin-Off**” means a distribution to all or substantially all holders of the Common Stock, Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Corporation, in each case, that is, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange.

“**Stock Price**” means, in respect of any Fundamental Change, (a) in the case of a Fundamental Change described in clause (b) of the definition thereof where the holders of the Common Stock receive only cash in the Fundamental Change, the cash amount paid per share of the Common Stock; and (b) in all other cases, the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days immediately prior to but not including the Effective Date.

“**Subsidiary**” means a corporation, partnership, limited liability company or other entity more than 50% of the outstanding voting equity of which is owned, directly or indirectly, by the Corporation or by one or more other Subsidiaries, or by the Corporation and one or more Subsidiaries. For the purposes of this definition, “**voting equity**” means stock or other ownership interests having ordinary voting power for the election of directors or other managers of a corporation, partnership, limited liability company or other entity, whether at all times or only so long as no senior class of stock or other ownership interests has such voting power by reason of any contingency.

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“**Successful Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Termination Event**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Threshold Appreciation Price**” means \$1,000 *divided by* the Minimum Conversion Rate, which quotient is initially equal to approximately \$28.7993.

“**Trading Day**” means (a) a day (i) on which the New York Stock Exchange, or, if the Common Stock is not then listed on the New York Stock Exchange, the principal exchange or quotation system on which the Common Stock is listed or admitted for trading, is scheduled to open for business and (ii) on which there has not occurred or does not exist a Market Disruption Event, or (b) if the Common Stock is not so listed or admitted for trading, a “**Trading Day**” means a Business Day.

“**Transfer Agent**” shall have the meaning assigned to it in Section 15 hereof.

“**Unit**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Unsuccessful Final Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Unsuccessful Optional Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Unsuccessful Remarketing**” shall have the meaning assigned to it in the Purchase Contract and Pledge Agreement.

“**Valuation Period**” shall have the meaning assigned to it in Section 10(a)(iii)(B) hereof.

“**Voting Preferred Stock**” shall have the meaning assigned to it in Section 14(d) hereof.

(4). *Dividends.*

(a) The Mandatory Convertible Preferred Stock shall initially not bear any dividends.

(b) In connection with a Successful Remarketing of the Mandatory Convertible Preferred Stock, dividends may become payable on the Mandatory Convertible Preferred Stock at a rate (the “**Dividend Rate**”) in accordance with Section 11 hereof. From and after the Remarketing Settlement Date for such Successful Remarketing in connection with which dividends become payable on the Mandatory Convertible Preferred Stock (a “**Dividend Increase Remarketing**”), Holders of Mandatory Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, cumulative dividends on each share of Mandatory Convertible Preferred Stock at the Dividend Rate on the Liquidation Preference per share of the Mandatory Convertible Preferred Stock, payable in cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at the Corporation’s election, subject to the limitations described below.



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(c) If a Dividend Increase Remarketing occurs, dividends shall accumulate from the Remarketing Settlement Date or if dividends shall have been paid on the Mandatory Convertible Preferred Stock thereafter, dividends will accumulate from the most recent Dividend Payment Date on which dividends were actually paid, and shall be payable on March 1, 2024 (or, at the Corporation's election in consultation with the Remarketing Agent(s) in connection with a Successful Optional Remarketing, on each of December 1, 2023 and March 1, 2024) (each, a "**Dividend Payment Date**") to the holders of record of shares of the Mandatory Convertible Preferred Stock as they appear on the Corporation's stock register at the close of business on the applicable Record Date ("**Record Holders**").

(d) The amount of dividends payable for any Dividend Period shall be calculated on the basis of a 360-day year consisting of twelve 30-day months (and for any period less than a month, on the basis of the actual number of days elapsed in a 30-day month). Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward. Dividends, if any, on each share of Mandatory Convertible Preferred Stock shall cease to accumulate upon conversion or automatic transfer of such share of Mandatory Convertible Preferred Stock.

(e) If a Dividend Payment Date falls on a date that is not a Business Day, such Dividend Payment Date shall be postponed to the next succeeding Business Day; *provided that*, if such Business Day falls in the next succeeding calendar month, the Dividend Payment Date shall be brought forward to the immediately preceding Business Day.

(f) After a Dividend Increase Remarketing, dividends on the Mandatory Convertible Preferred Stock shall accumulate whether or not (1) the Corporation has earnings; (2) there are funds legally available for the payment of those dividends; or (3) those dividends are authorized or declared. Any dividend payment made on the Mandatory Convertible Preferred Stock shall first be credited against the earliest accumulated but unpaid dividends due with respect to those shares of Mandatory Convertible Preferred Stock which remain payable.

(g) So long as any shares of Mandatory Convertible Preferred Stock remain Outstanding, unless full cumulative dividends, if any, on the Mandatory Convertible Preferred Stock for all past Dividend Periods (including Compounded Dividends thereon), if any, have been or contemporaneously are declared and paid or declared and a sum or number of shares of Common Stock sufficient for the payment thereof is set apart for payment, the Corporation shall not (i) declare and pay or declare and set aside for payment of dividends and shall not declare and make any distribution of cash or other property, directly or indirectly, on or with respect to any Junior Stock or Parity Stock with respect to dividends, for any period; (ii) redeem, purchase or otherwise acquire for any consideration, or make any other distribution of cash or other property, directly or indirectly, on or with respect to, or pay or make available any monies for a sinking fund for the redemption of, any Junior Stock or Parity Stock with respect to dividends or

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liquidation; or (iii) redeem, purchase or otherwise acquire for any consideration, or make any other distribution of cash or other property, directly or indirectly, on or with respect to the Purchase Contracts or make any payments (including any Contract Adjustment Payments) under the Purchase Contracts or any payment under any similar agreement providing for the issuance by the Corporation of Capital Stock on a forward basis; *provided* that, notwithstanding any provisions of this Section 4(g) to the contrary, the Corporation may make any Permitted Distribution. When the Corporation does not pay dividends, if any, in full (or does not set apart a sum sufficient to pay dividends in full) on the Mandatory Convertible Preferred Stock and any Parity Stock with respect to dividends, the Corporation shall declare any dividends upon the Mandatory Convertible Preferred Stock and any Parity Stock with respect to dividends *pro rata*, so that the amount of dividends declared per share of Mandatory Convertible Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the Mandatory Convertible Preferred Stock and such Parity Stock (which will not include any accumulation in respect of unpaid dividends on such Parity Stock for prior dividend periods if such Parity Stock does not have a cumulative dividend) bear to each other.

(h) The Corporation shall not permit any Subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, in accordance with Section 4(g), purchase or otherwise acquire such shares at such time and in such manner (such provisions described in this Section 4(h) and in Section 4(g) above, the “**Dividend Blocker Provisions**”).

(i) Any accumulated and unpaid dividends shall accumulate additional dividends (“**Compounded Dividends**”) at the Dividend Rate until paid, compounded quarterly, to, but excluding, the Dividend Payment Date.

(j) Holders are not entitled to any dividends on Mandatory Convertible Preferred Stock, whether payable in cash, property or shares of Common Stock, in excess of the full cumulative dividends (including Compounded Dividends) described herein.

(k) No dividend shall be paid unless and until the Board of Directors declares a dividend payable with respect to the Mandatory Convertible Preferred Stock. No dividend shall be declared or paid upon, or any sum of cash or number of shares of Common Stock set apart for the payment of dividends upon, any outstanding shares of Mandatory Convertible Preferred Stock with respect to any Dividend Period unless all dividends for all preceding Dividend Periods have been declared and paid upon, or a sufficient sum of cash or number of shares of Common Stock has been set apart for the payment of such dividends upon, all outstanding shares of Mandatory Convertible Preferred Stock.

(5). *Method of Payment of Dividends*

(a) Subject to the limitations described in this Section 5, the Corporation may pay any dividend (or any portion of any dividend) on the Mandatory Convertible Preferred Stock (whether or not for a current Dividend Period or any prior Dividend Period) and any Compounded Dividends, determined in the sole discretion of the Board of Directors: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and shares of Common Stock.

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(b) Each dividend shall be paid in cash, except to the extent the Corporation timely elects to make all or any portion of such dividend in shares of Common Stock. The Corporation shall give notice to Holders of any such election with respect to any particular dividend payment, and the portions of such dividend payment that will be made in cash and the portion of such payment that will be made in Common Stock no later than eight (8) Scheduled Trading Days prior to the Dividend Payment Date for such dividend.

(c) Any shares of Common Stock issued in payment or partial payment of a dividend shall be valued at the applicable Five-Day Average Price, multiplied by 97%.

(d) No fractional shares of Common Stock shall be issued by the Corporation to Holders in payment or partial payment of a dividend. Instead, in lieu of issuing fractional shares of Common Stock, a cash payment shall be made by the Corporation to each Holder that would otherwise be entitled to receive a fraction of a share of Common Stock based on (x) the Five-Day Average Price and (y) the aggregate number of shares of Mandatory Convertible Preferred Stock held by such Holder (or if such Holder's shares of Mandatory Convertible Preferred Stock are in the form of Global Preferred Shares, based on the applicable procedures of the Depositary for determining such number of shares).

(e) To the extent that the Corporation, in its reasonable judgment, determines that a Registration Statement is required in connection with the issuance of, or for resales of, Common Stock issued as payment of a dividend, if any, the Corporation shall, to the extent such a Registration Statement is not currently filed and effective, use its reasonable best efforts to file and maintain the effectiveness of such a Registration Statement until the earlier of such time as all such shares of Common Stock have been resold thereunder and such time as all such shares are freely tradable under Rule 144 under the Securities Act by non-Affiliates of the Corporation without registration. To the extent applicable, the Corporation shall also use its reasonable best efforts to have such shares of Common Stock qualified or registered under applicable state securities laws, if required, and approved for listing on the New York Stock Exchange (or if the Common Stock is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed).

(f) Any dividends paid in shares of Common Stock shall be subject to the listing standards of the New York Stock Exchange, if applicable.

(6). *Liquidation Preference.*

(a) In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the Corporation's assets (whether capital or surplus) shall be made to or set apart for the holders of Junior Stock with respect to rights upon liquidation, each Holder shall be entitled to receive

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\$1,000 per share of Mandatory Convertible Preferred Stock (the “**Liquidation Preference**”) *plus* an amount equal to all accumulated and unpaid dividends on such share (whether or not authorized or declared), if any, up to but excluding the date of payment (the “**Liquidation Dividend Amount**”), but subject to the prior payment in full of all the Corporation’s liabilities and the payment of Senior Stock with respect to rights upon liquidation. If, upon any liquidation, dissolution or winding-up of the Corporation, the Corporation’s assets, or proceeds thereof, are insufficient to pay in full the preferential amounts aforesaid on the Mandatory Convertible Preferred Stock and any other Parity Stock with respect to rights upon liquidation, then such assets, or the proceeds thereof, shall be distributed among the Holders of the Mandatory Convertible Preferred Stock and any such other Parity Stock ratably in proportion to the respective amounts that would be payable on such shares of Mandatory Convertible Preferred Stock and any such other Parity Stock as if all amounts payable thereon were paid in full.

(b) The Corporation shall instruct the Depository to notify its participants, or if the Depository or its nominee is not the sole registered owner of the then outstanding Mandatory Convertible Preferred Stock, send a written notice by first class mail to each holder of record of the Mandatory Convertible Preferred Stock at such holder’s registered address, of any event triggering the right to receive a distribution in connection with any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(c) Neither the consolidation or merger with or into any other Person, nor the voluntary sale, lease, transfer or conveyance of all or substantially all of the Corporation’s property or assets shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding-up of the Corporation.

(d) Subject to the rights of the holders of any Parity Stock with respect to rights upon liquidation, after payment has been made in full to the Holders of the Mandatory Convertible Preferred Stock, as provided in this Section 6, holders of Junior Stock with respect to rights upon liquidation shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed. After the payment to any Holders of the full amount of the Liquidation Preference and the Liquidation Dividend Amount for such Holder’s shares of Mandatory Convertible Preferred Stock, such Holder shall have no right or claim to any of the remaining assets of the Corporation.

*(7). Mandatory Conversion on the Mandatory Conversion Date; Automatic Transfer Upon Remarketing Failure.*

(a) Unless a Remarketing Failure has previously occurred, each outstanding share of Mandatory Convertible Preferred Stock shall automatically convert (unless previously converted in accordance with Section 9) on the Mandatory Conversion Date (“**Mandatory Conversion**”), into the number of shares of Common Stock equal to the Mandatory Conversion Rate. If a Remarketing Failure has previously occurred, then, effective as of December 1, 2023, in lieu of the Mandatory Conversion provided in the previous sentence and with respect to any shares of Mandatory Convertible Preferred Stock that remain outstanding following December 1, 2023, no Mandatory Conversion

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shall occur for such shares, no shares of Common Stock will be delivered upon such Mandatory Conversion to any Holder and each share of Mandatory Convertible Preferred Stock shall on the Mandatory Conversion Date be automatically, without any action on the part of the Corporation or any Holder, be transferred to the Corporation for no consideration, and shall thereupon be retired and canceled and shall cease to be outstanding for all purposes.

(b) Unless a Remarketing Failure has occurred, the “**Mandatory Conversion Rate**” shall, subject to adjustment in accordance with Section 7(c), be as follows:

(i) if the Mandatory Settlement Value is greater than the Threshold Appreciation Price, then the Mandatory Conversion Rate shall be equal to 34.7231 shares of Common Stock per share of Mandatory Convertible Preferred Stock (the “**Minimum Conversion Rate**”);

(ii) if the Mandatory Settlement Value is less than or equal to the Threshold Appreciation Price but equal to or greater than the Initial Price, then the Mandatory Conversion Rate per share of Mandatory Convertible Preferred Stock shall be equal to \$1,000 *divided by* the Mandatory Settlement Value, rounded to the nearest ten-thousandth of a share of Common Stock; or

(iii) if the Mandatory Settlement Value is less than the Initial Price, then the Mandatory Conversion Rate shall be equal to 40.7997 shares of Common Stock per share of Mandatory Convertible Preferred Stock (the “**Maximum Conversion Rate**”);

*provided* that the Fixed Conversion Rates are each subject to adjustment in accordance with the provisions of Section 10.

(c) Following a Dividend Increase Remarketing, if the Corporation declares a dividend for the Dividend Period ending on, but excluding, March 1, 2024, the Corporation shall pay such dividend to the Record Holders as of the immediately preceding Record Date, in accordance with Section 4 hereof. Following a Dividend Increase Remarketing, if on or prior to March 1, 2024 the Corporation has not declared all or any portion of the accumulated and unpaid dividends on the Mandatory Convertible Preferred Stock through March 1, 2024, the Mandatory Conversion Rate shall be adjusted so that Holders receive an additional number of shares of Common Stock equal to:

(i) the amount of such accumulated and unpaid dividends that have not been declared (“**Mandatory Conversion Additional Conversion Amount**”), *divided by*

(ii) the greater of (x) the Floor Price and (y) 97% of the applicable Five-Day Average Price (calculated using March 1, 2024 as the applicable Dividend Payment Date).

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To the extent that the Mandatory Conversion Additional Conversion Amount exceeds the product of such number of additional shares and 97% of the applicable Five-Day Average Price, the Corporation shall, if it is able to do so under applicable Delaware law, declare and pay such excess amount in cash (computed to the nearest cent) *pro rata* to the Holders. To the extent that the Corporation is not able to pay such excess amount in cash under applicable Delaware law, the Corporation shall not have any obligation to pay such amount in cash or deliver additional shares of Common Stock in respect of such amount.

(8). *No Redemption of the Mandatory Convertible Preferred Stock.* The Mandatory Convertible Preferred Stock shall not be redeemable. However, at the Corporation's option, the Corporation may purchase or otherwise acquire (including in an exchange transaction) Independent Shares from time to time in the open market, by tender or exchange offer or otherwise, without the consent of, or notice to, the Holders.

(9). *Conversion.*

(a) Right to Convert.

(i) Shares of Mandatory Convertible Preferred Stock corresponding to Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are components of Corporate Units cannot be converted. Only Independent Shares can be converted. Subject to and upon compliance with the provisions of this Section 9, (x) each holder of an Independent Share shall have the right, at such holder's option, to convert such share subject to satisfaction of the condition described in clause (ii) below, at any time prior to the close of business on the Business Day immediately preceding December 1, 2023 under the circumstances and during the periods set forth in clause (ii) below, and (y) at any time on or after December 1, 2023 but prior to March 1, 2024, each holder of an Independent Share shall have the right, at such holder's option, to convert such share regardless of the conditions described in clause (ii) below (subject to, and in accordance with, clause (c) or clause (d) below, as applicable).

(ii) If a transaction or event that constitutes a Fundamental Change occurs prior to December 1, 2023 unless a Remarketing Failure has occurred, all or any integral number of a holder's Independent Shares may be surrendered for conversion at any time from or after the Effective Date of such transaction until the related Fundamental Change Conversion Deadline (subject to, and in accordance with, Section 9(d) below).

(b) Reserved.

(c) Early Conversion at the Option of the Holder.

(i) Other than during a Fundamental Change Conversion Period, on or after December 1, 2023 and unless there has been a Remarketing Failure, subject to satisfaction of the conversion procedures set forth in Section 9(e), Holders shall have the right to convert their Independent Shares, in whole or in part (but in no event less than one share of Mandatory Convertible Preferred Stock), at any time prior to March 1, 2024 (an "**Early Conversion**"), into shares of Common Stock at the Minimum Conversion Rate, subject to adjustments in accordance with Section 9(c)(ii).

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(ii) If, as of any Early Conversion Date, the Corporation has not declared all or any portion of the accumulated and unpaid dividends for all full Dividend Periods ending on or before the Dividend Payment Date immediately prior to such Early Conversion Date (if any), the Minimum Conversion Rate shall be adjusted, with respect to the relevant Early Conversion, so that the Holders converting their Mandatory Convertible Preferred Stock at such time receive an additional number of shares of Common Stock equal to:

(A) the amount of such accumulated and unpaid dividends that have not been declared for such full Dividend Periods (the “**Early Conversion Additional Conversion Amount**”), *divided by*

(B) the greater of (x) the Floor Price and (y) the Early Conversion Average Price.

To the extent that the Early Conversion Additional Conversion Amount exceeds the product of such number of additional shares of Common Stock and the Early Conversion Average Price, the Corporation shall not have any obligation to pay the shortfall in cash or deliver shares of Common Stock in respect of such shortfall.

Except as set forth in the first sentence of this Section 7(c)(ii), upon any Early Conversion of any shares of Mandatory Convertible Preferred Stock, the Corporation shall make no payment or allowance for unpaid dividends on such shares of the Mandatory Convertible Preferred Stock, unless such Early Conversion Date occurs after the Record Date for a declared dividend and on or prior to the immediately succeeding Dividend Payment Date, in which case the Corporation shall pay such dividend on such Dividend Payment Date to the Record Holder of the converted shares of the Mandatory Convertible Preferred Stock as of such Record Date (subject to, and in accordance with, Section 4 above).

(d) Fundamental Change Conversion.

(i) If a Fundamental Change occurs on or prior to March 1, 2024, unless a Remarketing Failure has occurred, subject to satisfaction of the conversion procedures set forth in Section 9(e), a Holder shall have the right to convert Independent Shares, in whole or in part (but in no event less than one share of Mandatory Convertible Preferred Stock), in connection with the Fundamental Change (the right of conversion, “**Fundamental Change Conversion Right**” and any such conversion, a “**Fundamental Change Conversion**”) at the conversion rate as set forth in this Section 9(d)(i) (the “**Fundamental Change Conversion Rate**”). If the Stock Price is less than the Threshold Appreciation Price, any such conversion in connection with the Fundamental Change shall be at a Fundamental Change Conversion Rate that shall be equal to (x) the \$1,000 Liquidation Preference *plus* all accumulated and unpaid dividends, if any, to, but excluding

the Fundamental Change Settlement Date (unless the Fundamental Change Conversion Date occurs after the Record Date for the payment of declared dividends and prior to the related Dividend Payment Date, in which case the Fundamental Change Conversion Rate calculation for such share shall not include any accumulated and unpaid dividends that will be paid to Record Holders on such Record Date) *divided by* (y) the average of the Closing Sale Prices of Common Stock for the five consecutive Trading Days ending on the second Business Day prior to the Fundamental Change Settlement Date (or, in the case of a Fundamental Change described in clause (b) of the definition of Fundamental Change where the holders of Common Stock receive only cash in the Fundamental Change, the cash amount paid per share of Common Stock) (the amount described in clause (y), the “**Fundamental Change Settlement Price**”). Notwithstanding the foregoing, in no event shall the Fundamental Change Conversion Rate exceed the \$1,000 Liquidation Preference *divided by* 50% of the then-current Initial Price (which shall initially equal 81.5994 shares of Common Stock per share of Mandatory Convertible Preferred Stock and be subject to adjustment as set forth under Section 10). If the Stock Price is greater than or equal to the Threshold Appreciation Price, then the Fundamental Change Conversion Rate shall be the Minimum Conversion Rate as of the Fundamental Change Conversion Deadline, *plus* an additional number of shares of Common Stock equal to (i) all accumulated and unpaid dividends, if any, to, but excluding the Fundamental Change Settlement Date (unless the Fundamental Change Conversion Date occurs after the Record Date for the payment of declared dividends and prior to the related Dividend Payment Date, in which case the Fundamental Change Conversion Rate calculation for such share shall not include any accumulated and unpaid dividends that will be paid to Record Holders on such Record Date) *divided by* (ii) the Fundamental Change Settlement Price.

(ii) A conversion of the Mandatory Convertible Preferred Stock shall be deemed for these purposes to be “in connection with” such Fundamental Change (regardless of the Stock Price) if the Conversion Date occurs from, and including, the Effective Date of such Fundamental Change to, and including, the date the Corporation specified in the Fundamental Change Company Notice as the last day on which a Holder may exercise the Fundamental Change Conversion Right with respect to that Fundamental Change (the “**Fundamental Change Conversion Deadline**”). The Fundamental Change Conversion Deadline shall be a date no less than 20 Business Days nor more than 35 Business Days after the Effective Date of the relevant Fundamental Change (but in no event later than March 1, 2024); *provided* that if any Purchase Contracts are outstanding at the time the Corporation gives the Fundamental Change Company Notice, such date shall not be less than 10 Business Days following the Fundamental Change Early Settlement Date the Corporation specifies for the Purchase Contracts pursuant to the Purchase Contract and Pledge Agreement.

(iii) The Corporation shall send a notice to Holders of the Mandatory Convertible Preferred Stock of a Fundamental Change within five Business Days after the Effective Date of such Fundamental Change (the “**Fundamental Change Company Notice**”). Such Fundamental Change Company Notice shall state:



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- (A) the events constituting the Fundamental Change;
  - (B) the Effective Date of the Fundamental Change;
  - (C) the Fundamental Change Conversion Deadline;
  - (D) the name and address of the Paying Agent and the Conversion Agent;
  - (E) the Fundamental Change Conversion Rate, or if the Stock Price is less than the Threshold Appreciation Price, the formula for determination of the Fundamental Change Conversion Rate;
  - (F) the procedures that the Holder must follow to exercise the Fundamental Change Conversion Right; and
  - (G) the Fundamental Change Settlement Date.

(iv) To exercise the Fundamental Change Conversion Right, a holder of the Mandatory Convertible Preferred Stock must convert its Independent Shares in accordance with Section 9(e) during the applicable Fundamental Change Conversion Period.

(v) If the holders of the Common Stock receive only cash in a Reorganization Event, then notwithstanding the foregoing, for all conversions in connection with a Fundamental Change that occur after the effective date of such transaction, the consideration due upon conversion of each such share of Mandatory Convertible Preferred Stock shall be solely cash in an amount equal to the Fundamental Change Conversion Rate *multiplied by* the Fundamental Change Settlement Price for such transaction.

(vi) The Corporation shall, to the extent applicable, comply with the listing standards of the New York Stock Exchange in connection with the issuance of Common Stock upon any exercise of the Fundamental Change Conversion Right.

(vii) Nothing in this Section 9(d) shall prevent an adjustment to the Fixed Conversion Rates pursuant to Section 10 in respect of a Fundamental Change or any increase to the Minimum Conversion Rate pursuant to Section 11 in connection with a Successful Remarketing.

(e) Conversion Procedures.

(i) Pursuant to Section 7, on the Mandatory Conversion Date, unless a Remarketing Failure has previously occurred, any outstanding shares of Mandatory Convertible Preferred Stock shall automatically convert into shares of Common Stock.

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If more than one share of the Mandatory Convertible Preferred Stock held by the same Holder is automatically converted on the Mandatory Conversion Date, the number of shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Mandatory Convertible Preferred Stock so converted. A Holder of shares of the Mandatory Convertible Preferred Stock that are mandatorily converted shall not be required to pay any transfer taxes or duties relating to the issuance or delivery of the Common Stock, except that such Holder shall be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of the Common Stock in a name other than the name of such Holder.

A certificate representing the shares of Common Stock issuable upon conversion shall be issued and delivered to the converting Holder or, if Mandatory Convertible Preferred Stock being converted are in book-entry form, the shares of Common Stock issuable upon conversion shall be delivered to the converting Holder through book-entry transfer through the facilities of the Depository, in each case, together with delivery by the Corporation to the converting Holder of any cash to which the converting Holder is entitled, on the later of (i) the Mandatory Conversion Date and (ii) the Business Day after the Holder has paid in full all applicable taxes and duties, if any.

The Person or Persons entitled to receive the shares of Common Stock issuable upon Mandatory Conversion shall be treated as the record holder(s) of such shares of Common Stock as of the close of business on the Mandatory Conversion Date. Except as provided under Section 10, prior to the close of business on the Mandatory Conversion Date, the Common Stock issuable upon conversion of Mandatory Convertible Preferred Stock shall not be outstanding, or deemed to be outstanding, for any purpose and Holders shall have no rights with respect to such Common Stock, including voting rights, rights to respond to tender offers and rights to receive any dividends or other distributions on the Common Stock, by virtue of holding Mandatory Convertible Preferred Stock.

(ii) To effect an Early Conversion pursuant to Section 9(c), a Holder must:

- (A) complete and sign the conversion notice on the back of the Mandatory Convertible Preferred Stock certificate or a facsimile of such conversion notice;
- (B) deliver the completed conversion notice and the certificated shares of Mandatory Convertible Preferred Stock to be converted to the Conversion Agent; and
- (C) if required, furnish appropriate endorsements and transfer documents.

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Notwithstanding the foregoing, to effect an Early Conversion pursuant to Section 9(c) of shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares, the Holder must, in lieu of the foregoing, comply with the applicable procedures of DTC (or any other Depository for the shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares appointed by the Corporation).

The Early Conversion shall be effective on the date on which a Holder has satisfied the foregoing requirements, to the extent applicable (“**Early Conversion Date**”).

If more than one share of the Mandatory Convertible Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Mandatory Convertible Preferred Stock so surrendered.

A Holder shall not be required to pay any taxes or duties relating to the issuance or delivery of Common Stock upon conversion, but such Holder shall be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of Common Stock in a name other than the name of such Holder.

A certificate representing the shares of Common Stock issuable upon conversion shall be issued and delivered to the converting Holder or, if Mandatory Convertible Preferred Stock being converted are in book-entry form, the shares of Common Stock issuable upon conversion shall be delivered to the converting Holder through book-entry transfer through the facilities of the Depository, in each case, together with delivery by the Corporation to the converting Holder of any cash to which the converting Holder is entitled, on the latest of (i) the second Business Day immediately succeeding the Early Conversion Date, (ii) if applicable, the second Business Day immediately succeeding the last day of the Early Conversion Settlement Period and (iii) the Business Day after the Holder has paid in full all applicable taxes and duties, if any.

The Person or Persons entitled to receive the shares of Common Stock issuable upon Early Conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock as of the close of business on the applicable Early Conversion Date. Except as set forth in Section 10, prior to the close of business on such applicable Early Conversion Date, the shares of Common Stock issuable upon conversion of any shares of Mandatory Convertible Preferred Stock shall not be outstanding for any purpose, and Holders shall have no rights with respect to such shares of Common Stock, including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock, by virtue of holding shares of Mandatory Convertible Preferred Stock.

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In the event that an Early Conversion is effected with respect to shares of Mandatory Convertible Preferred Stock representing less than all the shares of Mandatory Convertible Preferred Stock held by a Holder, upon such Early Conversion the Corporation shall execute and instruct the Registrar and Transfer Agent to countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares of Mandatory Convertible Preferred Stock as to which Early Conversion was not effected, or, if Mandatory Convertible Preferred Stock is held in book-entry form, the Corporation shall cause the Transfer Agent and Registrar to reduce the number of shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares by making a notation on Schedule I attached to the Global Preferred Share or otherwise notate such reduction in the register maintained by such Transfer Agent and Registrar.

(iii) To effect a Fundamental Change Conversion pursuant to Section 9(d), a Holder must:

- (A) complete and sign the conversion notice on the back of the Mandatory Convertible Preferred Stock certificate or a facsimile of such conversion notice;
- (B) deliver the completed conversion notice and the certificated shares of Mandatory Convertible Preferred Stock to be converted to the Conversion Agent; and
- (C) if required, furnish appropriate endorsements and transfer documents.

Notwithstanding the foregoing, to effect a Fundamental Change Conversion pursuant to Section 9(d) of shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares, the Holder must, in lieu of the foregoing, comply with the applicable procedures of DTC (or any other Depository for the shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares appointed by the Corporation). In either case, if required, such Holder must pay all taxes or duties that may be payable relating to any transfer involved in the issuance or delivery of Common Stock upon conversion in a name other than such Holder.

The Fundamental Change Conversion shall be effective on the date on which a Holder has satisfied the foregoing requirements, to the extent applicable (the “**Fundamental Change Conversion Date**”).

Subject to any applicable rules and procedures of the Depository, if more than one share of the Mandatory Convertible Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Mandatory Convertible Preferred Stock so surrendered.

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A Holder shall not be required to pay any taxes or duties relating to the issuance or delivery of Common Stock upon conversion, but such Holder shall be required to pay any tax or duty that may be payable relating to any transfer involved in the issuance or delivery of Common Stock in a name other than the name of such Holder.

A certificate representing the shares of Common Stock issuable upon conversion shall be issued and delivered to the converting Holder or, if shares of Mandatory Convertible Preferred Stock being converted are in book-entry form, the shares of Common Stock issuable upon conversion shall be delivered to the converting Holder through book-entry transfer through the facilities of the Depositary, in each case, together with delivery by the Corporation to the converting Holder of any cash to which the converting Holder is entitled, on the latest of (i) the second Business Day immediately succeeding the Fundamental Change Conversion Date, (ii) the Fundamental Change Settlement Date and (iii) the Business Day after the Holder has paid in full all applicable taxes and duties, if any.

The Person or Persons entitled to receive the shares of Common Stock issuable upon such Fundamental Change Conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock as of the close of business on the applicable Fundamental Change Conversion Deadline. Except as set forth in Section 10, prior to the close of business on such applicable Fundamental Change Conversion Deadline, the shares of Common Stock issuable upon conversion of any shares of Mandatory Convertible Preferred Stock shall not be outstanding for any purpose, and Holders shall have no rights with respect to the Common Stock, including voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock, by virtue of holding shares of Mandatory Convertible Preferred Stock.

In the event that a Fundamental Change Conversion is effected with respect to shares of Mandatory Convertible Preferred Stock representing less than all the shares of Mandatory Convertible Preferred Stock held by a Holder, upon such Fundamental Change Conversion the Corporation shall execute and instruct the Registrar and Transfer Agent to countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares of Mandatory Convertible Preferred Stock as to which Fundamental Change Conversion was not effected, or, if Mandatory Convertible Preferred Stock is held in book-entry form, the Corporation shall cause the Transfer Agent and Registrar to reduce the number of shares of Mandatory Convertible Preferred Stock represented by Global Preferred Shares by making a notation on Schedule I attached to the Global Preferred Share or otherwise notate such reduction in the register maintained by such Transfer Agent and Registrar.

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(iv) In the event that a Holder shall not by written notice designate the name in which shares of Common Stock to be issued upon conversion of such Mandatory Convertible Preferred Stock should be registered or, if applicable, the address to which the certificate or certificates representing such shares of Common Stock should be sent, the Corporation shall be entitled to register such shares, and make such payment, in the name of the Holder as shown on the records of the Corporation and, if applicable, to send the certificate or certificates representing such shares of Common Stock to the address of such Holder shown on the records of the Corporation.

(v) Shares of Mandatory Convertible Preferred Stock shall cease to be outstanding on the applicable Conversion Date, subject to the right of Holders of such shares to receive shares of Common Stock issuable upon conversion of such shares of Mandatory Convertible Preferred Stock and other amounts and shares of Common Stock, if any, to which they are entitled pursuant to Sections 7, 9(c) or 9(d) hereof, as applicable and, if the applicable Conversion Date occurs after the Record Date for a declared dividend and prior to the immediately succeeding Dividend Payment Date, subject to the right of the Record Holders of such shares of the Mandatory Convertible Preferred Stock on such Record Date to receive payment of the full amount of such declared dividend on such Dividend Payment Date pursuant to Section 4.

(vi) Upon the occurrence of a Termination Event prior to December 1, 2023, the consequences of a Remarketing Failure as set forth herein shall cease to apply and the Mandatory Convertible Preferred Stock shall be eligible for conversion as set forth in Sections 7, 9(c) and 9(d) as if there had previously been a Successful Remarketing.

(f) Reserved.

(g) Fractional Shares.

(i) No fractional shares of Common Stock shall be issued to Holders as a result of any conversion of shares of Mandatory Convertible Preferred Stock.

(ii) In lieu of any fractional shares of Common Stock otherwise issuable in respect of the shares of Mandatory Convertible Preferred Stock of any Holder that are converted on the Mandatory Conversion Date pursuant to Section 7 or at the option of the Holder pursuant to Section 9(c) or Section 9(d), the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the product of (i) that same fraction and (ii) the average of the Closing Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the second Business Day immediately preceding the Mandatory Conversion Date, Early Conversion Date or Fundamental Change Conversion Deadline, as applicable.

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(h) Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock. The Corporation shall:

- (i) at all times reserve and keep available, free from preemptive rights, for issuance upon the conversion of shares of the Mandatory Convertible Preferred Stock such number of authorized but unissued shares of Common Stock equal to the maximum number of shares of Common Stock deliverable upon conversion of all shares of Mandatory Convertible Preferred Stock based on the initial Maximum Conversion Rate and as if at the time of computation all such outstanding shares were held by a single Holder;
- (ii) prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Mandatory Convertible Preferred Stock or in respect of dividends thereon, comply with all applicable federal and state laws and regulations that require action to be taken by the Corporation (including, without limitation, the registration or approval, if required, of any shares of Common Stock to be provided for the purpose of conversion of the Mandatory Convertible Preferred Stock hereunder or in respect of dividends thereon);
- (iii) ensure that all shares of Common Stock, in each case, delivered upon conversion of the Mandatory Convertible Preferred Stock, if any, and in respect of dividends thereon, if any, will, in each case, upon delivery, be duly and validly issued, fully paid and nonassessable, free of all liens and charges and not subject to any preemptive rights; and
- (iv) if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, and if permitted by the rules of such exchange or automated quotation system, list and use its commercially reasonable efforts to keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion (including, without limitation, for the avoidance of doubt, with respect to the Mandatory Conversion Additional Conversion Amount or Early Conversion Additional Conversion Amount) of, or issuable in respect of the payment of dividends on, the Mandatory Convertible Preferred Stock.

(10). *Conversion Rate Adjustments*.

- (a) Each Fixed Conversion Rate shall be adjusted as set forth in this Section 10, except that the Corporation shall not make any adjustments to the Fixed Conversion Rates if Holders of the Mandatory Preferred Stock participate (other than in the case of a share split or share combination or a tender or exchange offer described in Section 10(a)(v)), at the same time and upon the same terms as holders of Common Stock and solely as a result of holding the Mandatory Convertible Preferred Stock, in any of the transactions set forth in Sections 10(a)(i)-(v) without having to convert their shares of Mandatory Convertible Preferred Stock as if they held a number of shares of Common Stock equal to (i) the Maximum Conversion Rate as of the record date for such transaction, *multiplied by* (ii) the number of shares of Mandatory Convertible Preferred Stock held by such Holder.

(i) If the Corporation issues Common Stock as a dividend or distribution on shares of Common Stock to all or substantially all holders of the Common Stock, or if the Corporation effects a share split or share combination, each Fixed Conversion Rate shall be adjusted based on the following formula:

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

where,

$CR_0$  = such Fixed Conversion Rate in effect immediately prior to the close of business on the record date for such dividend or distribution, or immediately prior to the open of business on the effective date for such share split or share combination, as the case may be;

$CR_1$  = such Fixed Conversion Rate in effect immediately after the close of business on such record date or immediately after the open of business on such effective date, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the close of business on such record date or immediately prior to the open of business on such effective date, as the case may be, in each case, prior to giving effect to such event; and

$OS_1$  = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such event.

Any adjustment made pursuant to this Section 10(a)(i) shall become effective as of the close of business on the record date for such dividend or other distribution or as of the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type set forth in this Section 10(a)(i) is declared but not so paid or made, each Fixed Conversion Rate shall be readjusted, on the date the Board of Directors determines not to pay or make such dividend or distribution, to such Fixed Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) If the Corporation distributes to all or substantially all holders of Common Stock any rights, options or warrants entitling them for a period of not more than 45 calendar days after the date of distribution thereof to subscribe for or purchase Common Stock, in any case at an exercise price per share of Common Stock less than the average of the Closing Sale Prices of Common Stock for the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of such distribution, each Fixed Conversion Rate shall be increased based on the following formula:

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

where,



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CR<sub>0</sub> = such Fixed Conversion Rate in effect immediately prior to the close of business on the record date for such distribution;

CR<sub>1</sub> = such Fixed Conversion Rate in effect immediately after the close of business on such record date;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the close of business on the record date for such distribution;

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

Y = the number of shares of Common Stock equal to the quotient of (A) the aggregate price payable to exercise such rights, options or warrants *divided by* (B) the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of the distribution of such rights, options or warrants.

If any right, option or warrant described in this Section 10(a)(ii) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof (and as a result no additional shares of Common Stock are delivered or issued pursuant to such rights, options or warrants), then each Fixed Conversion Rate shall be readjusted, as of the date of such expiration, to the Fixed Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery or issuance of only the number of shares of Common Stock actually delivered.

For purposes of this Section 10(a)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price per share of Common Stock less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of the distribution of such rights, options or warrants, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received by the Corporation for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors. Any increase made under this Section 10(a)(ii) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the record date for such distribution.

(iii) (A) If the Corporation distributes shares of capital stock, evidences of indebtedness or other assets or property of the Corporation or rights, options or warrants to acquire its capital stock or other securities to all or substantially all holders of Common Stock (excluding (x) any dividend, distribution or issuance as to which an adjustment was effected pursuant to Section 10(a)(i) or Section 10(a)(ii) above, (y) any dividend or distribution paid exclusively in cash, and (z) any Spin-Off to which the provisions in clause (B) below apply), then each Fixed Conversion Rate shall be increased based on the following formula:

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

where,

- $CR_0$  = such Fixed Conversion Rate in effect immediately prior to the close of business on the record date for such distribution;
- $CR_1$  = such Fixed Conversion Rate in effect immediately after the close of business on such record date;
- $SP_0$  = the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- $FMV$  = the fair market value (as determined in good faith by the Board of Directors), on the record date for such dividend or distribution, of the shares of capital stock, evidences of indebtedness, assets or property so distributed, expressed as an amount per share of Common Stock.

An adjustment to the Fixed Settlement Rates made pursuant to the immediately preceding paragraph shall become effective as of the close of business on the record date for such distribution.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “ $SP_0$ ” (as defined above), in lieu of the foregoing increase, each Holder shall receive, in respect of each share of Mandatory Convertible Preferred Stock, at the same time and upon the same terms as holders of Common Stock and without having to convert its shares of Mandatory Convertible Preferred Stock, the amount of such distributed shares of capital stock, evidences of the Corporation’s indebtedness or other assets or property of the Corporation that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Conversion Rate in effect on the record date for such dividend or distribution.

(B) However, if there has been a Spin-Off, then each Fixed Conversion Rate shall be increased based on the following formula:

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

where,

- $CR_0$  = such Fixed Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;
- $CR_1$  = such Fixed Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;
- $FMV_0$  = the average of the Closing Sale Prices of capital stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over each of the 10 consecutive Trading Days commencing on, and including, the Ex-Dividend Date for such dividend or distribution (the “**Valuation Period**”); and

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$MP_0$  = the average of the Closing Sale Prices of Common Stock over the Valuation Period.

The increase to each Fixed Conversion Rate under this clause (B) will be calculated by the Corporation as of the close of business on the last Trading Day of the Valuation Period but shall be given retroactive effect as of immediately after the open of business on the Ex-Dividend Date of the Spin-Off. Because the Corporation shall make the adjustment to each Fixed Conversion Rate with retroactive effect, the Corporation shall delay the settlement of any conversion of the Mandatory Convertible Preferred Stock where any date for determining the number of shares of Common Stock issuable to a Holder occurs during the Valuation Period until the second Business Day after the last Trading Day of such Valuation Period.

If any dividend or distribution described in this Section 10(a)(iii) is declared but is not so paid or made, each Fixed Conversion Rate shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(iv) If any cash dividend or distribution is made to all or substantially all holders of Common Stock other than a regular, quarterly cash dividend that does not exceed \$0.22 per share (the “**Initial Dividend Threshold**”), each Fixed Conversion Rate shall be increased based on the following formula:

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

where,

$CR_0$  = such Fixed Conversion Rate in effect immediately prior to the close of business on the record date for such dividend or distribution;

$CR_1$  = such Fixed Conversion Rate in effect immediately after the close of business on such record date;

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

$T$  = the Initial Dividend Threshold; *provided* that if the dividend or distribution is not a regular quarterly cash dividend, the Initial Dividend Threshold shall be deemed to be zero; and

$C$  = the amount in cash per share the Corporation distributes to all or substantially all holders of Common Stock.

Any increase made under this Section 10(a)(iv) shall become effective as of the close of business on the record date for such dividend or distribution.

Notwithstanding the foregoing, if “ $C$ ” (as defined above) is equal to or greater than “ $SP_0$ ” (as defined above), in lieu of the foregoing increase, each Holder shall receive, in respect of each share of Mandatory Convertible Preferred Stock, at the same time and upon the same terms as holders of shares of Common Stock and without having to convert its shares of Mandatory Convertible Preferred Stock, the amount of distributed cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Conversion Rate on the record date for such cash dividend or distribution.

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The Initial Dividend Threshold shall be subject to adjustment in a manner inversely proportional to adjustments to the Maximum Conversion Rate; *provided* that no adjustment shall be made to the Initial Dividend Threshold for any adjustment to the Fixed Conversion Rates under this Section 10(a)(iv).

If any dividend or distribution described in this Section 10(a)(iv) is declared but not so paid or made, each Fixed Conversion Rate shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Fixed Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(v) If the Corporation or any of its Subsidiaries make a payment in respect of a tender or exchange offer for Common Stock to the extent that the cash and value of any other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (such last date, the “**Expiration Date**”), each Fixed Conversion Rate shall be increased based on the following formula:

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

where,

CR<sub>0</sub> = such Fixed Conversion Rate in effect immediately prior to the close of business on the Trading Day immediately following the Expiration Date;

CR<sub>1</sub> = such Fixed Conversion Rate in effect immediately after the close of business on the Trading Day immediately following the Expiration Date;

AC = the fair market value (as determined in good faith by the Board Of Directors, whose good faith determination shall be conclusive), at the close of business on the Trading Day immediately following the Expiration Date, of the aggregate value of all cash and any other consideration paid or payable for shares validly tendered or exchanged and not withdrawn as of the Expiration Date;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the last time tenders or exchanges may be made pursuant to such tender or exchange offer (prior to giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer);

OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender or exchange offer (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer); and

SP<sub>1</sub> = the Closing Sale Price of the Common Stock on the Trading Day next succeeding the Expiration Date.

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The adjustments to the Fixed Conversion Rates under the preceding this Section 10(a)(v) shall occur at the close of business on the Trading Day immediately following the Expiration Date.

(vi) If:

(A) the record date for a dividend or distribution on shares of the Common Stock occurs after the end of the Mandatory Averaging Period and before the Mandatory Conversion Date; and

(B) such dividend or distribution would have resulted in an adjustment of the number of shares of Common Stock issuable to the Holders had such record date occurred on or before the last Trading Day of such 40-Trading Day period,

then the Corporation shall deem the Holders to be holders of record, for each share of their Mandatory Convertible Preferred Stock, of a number of shares of Common Stock equal to the Mandatory Conversion Rate for purposes of that dividend or distribution, and in such a case, the Holders would receive the dividend or distribution on Common Stock together with the number of shares of Common Stock issuable upon mandatory conversion of Mandatory Convertible Preferred Stock.

(vii) If the Corporation has a rights plan in effect upon conversion of the Mandatory Convertible Preferred Stock into Common Stock, each Holder shall receive, in addition to any shares of Common Stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan, each Fixed Conversion Rate shall be adjusted at the time of separation as if the Corporation distributed to all or substantially all holders of Common Stock, shares of its capital stock, evidences of indebtedness, assets, property, rights, options or warrants as set forth in Section 10(a)(iii)(A) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(viii) The Corporation may (but is not required to), to the extent permitted by law and the rules of The New York Stock Exchange or any other securities exchange on which the shares of Common Stock or the Mandatory Convertible Preferred Stock is then listed, increase each Fixed Conversion Rate by any amount for a period of at least 20 Business Days if such increase is irrevocable during such 20 Business Days and the Board of Directors determines that such increase would be in the best interest of the Corporation. The Corporation may also (but is not required to) increase each Fixed Conversion Rate as it deems advisable in order to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of shares of Common Stock (or issuance of rights or warrants to acquire shares of Common Stock) or from any event treated as such for income tax purposes or for any other reason. However, in either case, the Corporation may only make such discretionary adjustments if it makes the same proportionate adjustment to each Fixed Conversion Rate.

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(ix) The Corporation shall not adjust the Fixed Conversion Rates:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Corporation and the investment of additional optional amounts in shares of Common Stock under any plan;

(B) upon the issuance of options, restricted stock or other awards in connection with any employment contract, executive compensation plan, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, consultants or independent contractors or the exercise of such options or other awards;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Mandatory Convertible Preferred Stock was first issued;

(D) for a change in the par or no par value of the Common Stock; or

(E) for accumulated dividends, if any, on the Mandatory Convertible Preferred Stock, except as described in Section 7 and Section 9.

(x) Adjustments to each Fixed Conversion Rate shall be calculated by the Corporation to the nearest 1/10,000th of a share. Except as otherwise provided above, the Corporation shall be responsible for making all calculations called for under the Mandatory Convertible Preferred Stock. These calculations include, but are not limited to, determinations of the Fundamental Change Settlement Price, the Stock Price in connection with a Fundamental Change, the Daily VWAPs, the Five-Day Average Prices and the Fixed Conversion Rates of the Mandatory Convertible Preferred Stock.

(xi) For the avoidance of doubt, if an adjustment is made to the Fixed Conversion Rates, no separate inversely proportionate adjustment will be made to the Initial Price or the Threshold Appreciation Price because the Initial Price is equal to \$1,000 *divided by* the Maximum Conversion Rate (as adjusted in the manner described herein) and the Threshold Appreciation Price is equal to \$1,000 *divided by* the Minimum Conversion Rate (as adjusted in the manner described herein).

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(xii) Whenever any provision of this Certificate of Designations requires the Corporation to calculate the Closing Sale Price or Daily VWAP per share of Common Stock over a span of multiple days, the Board of Directors shall make appropriate adjustments in good faith (including, without limitation, to the Mandatory Settlement Value, the Early Conversion Average Price, the Fundamental Change Settlement Price and the Five-Day Average Price, as the case may be) to account for any adjustments to the Fixed Conversion Rates (as the case may be) that become effective, or any event that would require such an adjustment if the record date, Ex-Dividend Date, effective date or Expiration Date, as the case may be, of such event occurs during the relevant period used to calculate such prices or values, as the case may be.

(b) Whenever the Fixed Conversion Rates are to be adjusted, the Corporation shall:

(i) compute such adjusted Fixed Conversion Rates;

(ii) within 10 Business Days after the Fixed Conversion Rates are to be adjusted, provide or cause to be provided, a written notice to the Holders of Mandatory Convertible Preferred Stock of the occurrence of such event; and

(iii) within 10 Business Days after the Fixed Conversion Rates are to be adjusted, provide or cause to be provided, to the Holders of Mandatory Convertible Preferred Stock, a statement setting forth in reasonable detail the method by which the adjustments to the Fixed Conversion Rates were determined and setting forth such adjusted Fixed Conversion Rates.

(c) As used in this Section 10, “record date” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board Of Directors, statute, contract or otherwise), and “effective date” means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(11). *Remarketing.*

(a) Remarketing. Holders of Separate Shares of Mandatory Convertible Preferred Stock shall have the rights in respect of any Remarketing as set forth in the Purchase Contract and Pledge Agreement.

(b) Increased Rates May Apply

(i) In connection with each Remarketing, the Board of Directors shall determine any Increased Rate after consultation with the Remarketing Agent.

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(ii) In the event of a Successful Remarketing, (A) dividends may become payable on the Mandatory Convertible Preferred Stock and/or (B) if the Closing Sale Price of the Common Stock on the pricing date for a Successful Remarketing is less than or equal to the Initial Price, the Minimum Conversion Rate shall be increased to the Increased Minimum Conversion Rate, in each case, on the Remarketing Settlement Date, as determined by the Board of Directors after consultation with the Remarketing Agent(s), and the Corporation shall (i) notify each of the Transfer Agent and the Conversion Agent by an Officer's certificate delivered to the Transfer Agent and the Conversion Agent and (ii) request the Depositary to notify its Depositary Participants holding shares of Mandatory Convertible Preferred Stock of the Increased Rate(s) established for the Mandatory Convertible Preferred Stock during the Remarketing on the Business Day following the date of the Successful Remarketing. Notwithstanding the foregoing, in no event shall the Increased Minimum Conversion Rate exceed the Maximum Conversion Rate. Neither the Dividend Rate nor the Minimum Conversion Rate can be decreased, nor the Maximum Conversion Rate changed, in connection with a Remarketing. Any modified terms of the Mandatory Convertible Preferred Stock in connection with a Remarketing shall apply to every share of Mandatory Convertible Preferred Stock, whether or not remarketed.

(iii) In the event of an Unsuccessful Final Remarketing, an Unsuccessful Optional Remarketing, or if no Applicable Ownership Interests in Mandatory Convertible Preferred Stock are included in Corporate Units and none of the holders of the Separate Shares of Mandatory Convertible Preferred Stock elect to have their shares of Mandatory Convertible Preferred Stock remarketed in any Remarketing, no Increased Rates shall apply. In the event of a Remarketing Failure, then, effective as of December 1, 2023, with respect to any shares of Mandatory Convertible Preferred Stock that remain outstanding following December 1, 2023, no Mandatory Conversion shall occur and each share of Mandatory Convertible Preferred Stock shall on the Mandatory Conversion Date be automatically, without any action on the part of the Corporation or any Holder, be transferred to the Corporation for no consideration and without any payment of cash or shares of Common Stock thereon, and shall thereupon be retired and canceled and shall cease to be outstanding for all purposes.

(iv) If there is an Unsuccessful Remarketing, the Corporation shall cause a notice of the Unsuccessful Remarketing to be published before the open of business on the Business Day following the Applicable Remarketing Period. This notice shall be validly published by making a timely release to any appropriate news agency, including, without limitation, Bloomberg Business News and the Dow Jones News Service.

(v) The Corporation shall, and the Corporation shall cause the Remarketing Agent(s) pursuant to the terms of the Remarketing Agreement to, use its reasonable best efforts to remarket the Mandatory Convertible Preferred Stock, along with any Separate Shares of Mandatory Convertible Preferred Stock, the holders of which have elected to participate in the applicable Remarketing, during each Applicable Remarketing Period. For the avoidance of doubt, and without limiting the generality of the foregoing, the Corporation and its Board of Directors shall accept the terms of a Successful Remarketing if the Closing Sale Price of the Common Stock at the time of any scheduled, proposed or purported Remarketing Date is above the Threshold Appreciation Price.



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(12). *Effect of Recapitalizations, Reclassifications and Changes of Common Stock.*

(a) Each of the following events constitutes a “**Reorganization Event**”:

- (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);
- (ii) any consolidation, merger or combination involving the Corporation;
- (iii) any sale, lease or other transfer to another Person of the consolidated assets of the Corporation and its Subsidiaries substantially as an entirety; or
- (iv) any statutory exchange of the Common Stock;

in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (“**Exchange Property**”). In the event of any Reorganization Event, each share of Mandatory Convertible Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the Holders, become convertible into Exchange Property Units, and, at the effective time of such Reorganization Event, the Corporation shall amend this Certificate of Designations without the consent of the Holders to provide for such change in the convertibility of the Mandatory Convertible Preferred Stock. In the event holders of Common Stock (other than any Constituent Person or Affiliate thereof) have the opportunity to elect the form of consideration to be received in any Reorganization Event, the Exchange Property Unit shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock.

(b) The number of Exchange Property Units the Corporation shall deliver upon conversion of each share of Mandatory Convertible Preferred Stock or as a payment of dividends on the Mandatory Convertible Preferred Stock, as applicable, following the effective date of such Reorganization Event shall be determined as if references in Section 4, Section 7 and/or Section 9 to shares of Common Stock, as the case may be, were to Exchange Property Units. For the purpose of determining which of clauses (i), (ii) and (iii) of Section 7(b) shall apply upon Mandatory Conversion, and for the purpose of calculating the Mandatory Conversion Rate if clause (ii) of Section 7(b) is applicable, the value of an Exchange Property Unit shall be determined in good faith by the Board of Directors (which determination shall be final), except that if a Unit of Exchange Property includes common stock or American Depositary Receipts (“**ADRs**”) that are traded on a U.S. national securities exchange, the value of such common stock or ADRs shall be the average over the Mandatory Averaging Period of the volume-weighted average prices for such common stock or ADRs, as displayed on the applicable Bloomberg screen (as determined in good faith by the Board of Directors (which determination shall be final)); or, if such price is not available, the average market value per share of such common stock or ADRs over such period as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Corporation for this purpose.

(c) For the purpose of calculating any Fundamental Change Settlement Price, the value of an Exchange Property Unit shall be determined in good faith by the Board of Directors (which determination shall be final), except that if an Exchange Property Unit includes common stock or ADRs that are traded on a U.S. national securities exchange, the value of such common stock or ADRs shall be the average over the five consecutive Trading Day period used for calculating the Fundamental Change Settlement Price of the closing prices for such common stock or ADRs, as displayed on the applicable Bloomberg screen (as determined in good faith by the Board of Directors (which determination shall be final)); or, if such price is not available, the average market value per share of such common stock or ADRs over such period as determined by a nationally recognized independent investment banking firm retained by the Corporation for this purpose.

(d) The provisions of this Section 12 shall apply to successive Reorganization Events, and the provisions under Section 10 above shall apply to any shares of common equity or ADRs of the Corporation or any successor received by the holders of shares of Common Stock in any such Reorganization Event. The Corporation (or any successor to it) shall, as soon as reasonably practicable (but in any event within five calendar days) after the occurrence of any Reorganization Event provide written notice to the Holders of such occurrence and of the kind and amount of cash, securities or other property that constitute the Exchange Property Units. Failure to deliver such notice shall not affect the operation of the provisions described in this Section 12.

(e) In connection with any Reorganization Event, the Corporation shall also adjust the Initial Dividend Threshold based on the number of shares of common stock comprising the Exchange Property Units and (if applicable) the value of any non-stock consideration comprising the Exchange Property Units. If the Exchange Property Units are composed solely of non-stock consideration, the Initial Dividend Threshold shall be zero.

(13). *Reserved.*

(14). *Voting Rights.*

(a) The holders of Outstanding shares of the Mandatory Convertible Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this Section 14, as otherwise provided in the Certificate of Incorporation or as otherwise provided by applicable law. In respect of any matter on which the holders of Outstanding shares of Mandatory Convertible Preferred Stock are entitled to vote pursuant to this Section 14, each holder of Outstanding shares of Mandatory Convertible Preferred Stock shall have one vote for each such share of Mandatory Convertible Preferred Stock held; *provided* that on any matter on which the holders of outstanding shares of the Mandatory Convertible Preferred Stock are entitled to vote as a class with any Parity Stock, each share of Mandatory Convertible Preferred Stock and each share of Parity Stock participating in such vote shall be entitled to a number of votes in proportion to the liquidation preference then-applicable to such shares.

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(b) So long as any shares of Mandatory Convertible Preferred Stock are outstanding, the affirmative vote or consent of the holders of at least two-thirds in voting power of the Outstanding shares of the Mandatory Convertible Preferred Stock and all other classes or series of Parity Stock upon which like voting rights have been conferred, voting as a single class, in person or by proxy, at an annual meeting of the Corporation's stockholders or at a special meeting called for such purpose, or by written consent in lieu of such a meeting, shall be required for the following events:

(i) to authorize, create or issue, or increase the number of authorized or issued shares of, any class or series of Senior Stock, or reclassify any Capital Stock of the Corporation into any such shares of Senior Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares of Senior Stock;

(ii) to alter, repeal or amend any provisions of the Certificate of Incorporation (by amendment, merger or otherwise) so as to materially and adversely affect any right, preference, privilege or voting power of the Mandatory Convertible Preferred Stock; or

(iii) to consummate a reorganization or reclassification involving the shares of Mandatory Convertible Preferred Stock or a merger or consolidation of the Corporation with another entity, unless either (A) the shares of Mandatory Convertible Preferred Stock remain outstanding and have rights, preferences, privileges and voting powers, taken as a whole, that are no less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Mandatory Convertible Preferred Stock immediately prior to such consummation, taken as a whole, or (B) in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, the shares of Mandatory Convertible Preferred Stock are converted into or reclassified into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, such surviving or resulting entity or ultimate parent is organized under the laws of the United States, any state thereof or the District of Columbia and treated as a corporation for U.S. federal income tax purposes, and such preference securities have rights, preferences, privileges and voting powers, taken as a whole, that are no less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Mandatory Convertible Preferred Stock immediately prior to such consummation, taken as a whole;

*provided* that neither (i) any amendment of this Certificate of Designation in accordance with the terms of Section 12(a), nor (ii) the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to pre-emptive or similar rights or otherwise, of any series of Preferred Stock (including the Mandatory Convertible Preferred Stock) constituting Junior Stock or Parity Stock with respect to the payment of

dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon the Corporation's liquidation, dissolution and winding-up, shall be deemed to materially or adversely affect the rights, preferences, privileges or voting powers of the Mandatory Convertible Preferred Stock, and shall not require the affirmative vote or consent of the Holders of the Mandatory Convertible Preferred Stock.

If any amendment, alteration, repeal, reclassification, merger or consolidation specified above would adversely affect one or more but not all series of Parity Stock (including the Mandatory Convertible Preferred Stock for this purpose), then only the one or more series of Parity Stock adversely affected and entitled to vote, rather than all series of Parity Stock, shall vote, and any such vote shall be as a single class.

(c) To the fullest extent permitted by law, without the consent of the Holders, so long as such action does not adversely affect the special rights, preferences, privileges or voting powers of the Mandatory Convertible Preferred Stock, and limitations and restrictions thereof, the Corporation may amend, alter, supplement or repeal any terms of the Mandatory Convertible Preferred Stock for the following purposes:

- (i) to cure any ambiguity, defect, inconsistency or mistake, or to correct or supplement any provision contained in this Certificate of Designations establishing the terms of the Mandatory Convertible Preferred Stock that may be defective or inconsistent with any other provision contained in in this Certificate of Designations;
- (ii) to make any provision with respect to matters or questions relating to the Mandatory Convertible Preferred Stock that is not inconsistent with the provisions of this Certificate of Designations establishing the terms of the Mandatory Convertible Preferred Stock, including, but not limited to, the filing with the Secretary of State a certificate of designations to reflect the amended terms (if any) of the Mandatory Convertible Preferred Stock in connection with a Successful Remarketing or a Remarketing Failure;
- (iii) to waive any of the Corporation's rights with respect thereto; or
- (iv) to make any other change to the terms of the Mandatory Convertible Preferred Stock;

*provided* that any such amendment, alteration, supplement or repeal of any terms of the Mandatory Convertible Preferred Stock effected in order to (1) conform the terms thereof to the description contained in the Prospectus Supplement (as supplemented and/or amended by the related term sheet) or (2) implement changes in connection with a Successful Remarketing as set forth in Section 11, as the case may be, shall be deemed not to adversely affect the special rights, preferences, privileges or voting powers of the Mandatory Convertible Preferred Stock, or limitations and restrictions thereof.

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Except as set forth above, the Holders of Mandatory Convertible Preferred Stock shall not be entitled to vote with respect to (A) any increase in the number of the authorized shares of Common Stock or Preferred Stock, (B) any increase in the number of authorized shares of Mandatory Convertible Preferred Stock, (C) the creation, issuance or increase in the number of authorized shares of any Junior Stock or Parity Stock, or (D) any corporate action, including any merger or consolidation involving the Corporation or a sale of all or substantially all of the assets of the Corporation, regardless of the effect that such merger, consolidation or sale may have upon the powers, preferences, voting power or other rights or privileges of Mandatory Convertible Preferred Stock. No holder of Common Stock or any other class or series of Capital Stock of the Corporation shall be entitled to vote with respect to any changes to the terms of the Mandatory Convertible Preferred Stock or the adoption of any certificate of designations with respect thereto in connection with a Successful Remarketing as set forth in Section 11.

(d) After a Dividend Increase Remarketing, if and whenever dividends on any shares of Mandatory Convertible Preferred Stock shall not have been declared and paid for at least six Dividend Periods, whether or not consecutive (a “**Nonpayment Event**”), the number of directors then constituting the Board of Directors shall automatically be increased by two and the Holders of Mandatory Convertible Preferred Stock, voting as a class together with the holders of any outstanding Parity Stock with like voting rights that are exercisable at the time and entitled to vote thereon (“**Voting Preferred Stock**”), shall be entitled to elect the two additional directors (the “**Preferred Stock Directors**”), *provided* that it shall be a qualification for election for any such Preferred Stock Director that (i) the election of such director shall not cause the Corporation to violate the corporate governance requirements of the New York Stock Exchange (or any other securities exchange or other trading facility on which securities of the Corporation may then be listed or traded) that listed or traded companies must have a majority of independent directors and (ii) such director shall not be prohibited or disqualified from serving as a director on the Board of Directors by any applicable law, and *provided further* that the Board of Directors shall at no time include more than two Preferred Stock Directors.

In the event that the Holders of the Mandatory Convertible Preferred Stock shall be entitled to vote for the election of the Preferred Stock Directors following a Nonpayment Event, such directors shall be initially elected following such Nonpayment Event only at a special meeting called at the request of the holders of record of at least 25% of the Mandatory Convertible Preferred Stock or Voting Preferred Stock (unless such request for a special meeting is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders of the Corporation, in which event such election shall be held only at such next annual or special meeting of stockholders), and at each subsequent annual meeting of stockholders of the Corporation. Such request to call a special meeting for the initial election of the Preferred Stock Directors after a Nonpayment Event shall be made by written notice, signed by the requisite Holders of the Mandatory Convertible Preferred Stock or Voting Preferred Stock, and delivered to the Secretary of the Corporation in person or by first class mail, postage prepaid, or in such other manner as may be required by applicable law.

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When all accumulated and unpaid dividends on the Mandatory Convertible Preferred Stock have been paid in full, then the right of the Holders of Mandatory Convertible Preferred Stock to elect the Preferred Stock Directors shall cease (but subject always to revesting of such voting rights in the case of any future Nonpayment Event pursuant to this Section 14(d)), and the terms of office of all the Preferred Stock Directors shall forthwith terminate and the number of directors constituting the Board of Directors shall automatically decrease by two.

Any Preferred Stock Director may be removed at any time without cause by the holders of a majority of the outstanding shares of the Mandatory Convertible Preferred Stock and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). So long as a Nonpayment Event shall continue, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Nonpayment Event) may be filled by the written consent of the Preferred Stock Director remaining in office, or if none remains in office, by a vote of the Holders of the Mandatory Convertible Preferred Stock and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). Any such vote of stockholders to remove, or to fill a vacancy in the office of, a Preferred Stock Director may be taken only at a special meeting of such stockholders, called as provided above for an initial election of Preferred Stock Directors after a Nonpayment Event (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders). The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Each Preferred Stock Director elected at any special meeting of stockholders or by written consent of the other Preferred Stock Director shall hold office until the next annual meeting of the stockholders if such office shall not have previously terminated as above provided.

(15). *Transfer Agent, Dividend Disbursing Agent and Registrar.* The duly appointed transfer agent (the “**Transfer Agent**”), dividend disbursing agent (the “**Dividend Disbursing Agent**”) and Registrar (the “**Registrar**”) for the Mandatory Convertible Preferred Stock shall be Computershare Trust Company, N.A. The Corporation may, in its sole discretion, remove the Transfer Agent; *provided* that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal.

(16). *Currency.* All shares of Mandatory Convertible Preferred Stock shall be denominated in U.S. currency, and all payments and distributions thereon or with respect thereto shall be made in U.S. currency. All references herein to “\$” or “dollars” refer to U.S. currency.

(17). *Form.*

(a) Shares of the Mandatory Convertible Preferred Stock shall be issued in fully registered, certificated form and may be issued in the form of one or more permanent global shares of Mandatory Convertible Preferred Stock registered in the name of the Depositary or its nominee (each, a “**Global Preferred Share**”), which shall be substantially in the form set forth in Exhibit A. Mandatory Convertible Preferred Stock represented by the Global Preferred Shares will be exchangeable for other certificates evidencing shares of Mandatory Convertible Preferred Stock only (x) if the Depositary (A) has notified the Corporation that it is unwilling or unable to continue as depositary

for the Global Preferred Shares or (B) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor depository is not appointed by the Corporation within 90 days after such notice or cessation, (y) if the Corporation determines at any time that the shares of Mandatory Convertible Preferred Stock shall no longer be represented by Global Preferred Shares, in which case it shall inform the Depository of such determination, or (z) following the request of a beneficial owner of Mandatory Convertible Preferred Stock seeking to exercise or enforce its rights with respect to its shares of Mandatory Convertible Preferred Stock. In any such case, such new certificates evidencing shares of Mandatory Convertible Preferred Stock shall be registered in the name or names of the Person or Person specified by the Depository in a written instrument to the Registrar. Except as provided above, owners of beneficial interest in a Global Preferred Share will not be entitled to receive certificates evidencing shares of Mandatory Convertible Preferred Stock. Unless and until such Global Preferred Share is exchanged for other certificates evidencing shares of Mandatory Convertible Preferred Stock, Global Preferred Shares may be transferred, in whole but not in part, and any payments on the Mandatory Convertible Preferred Stock shall be made, only to the Depository or a nominee of the Depository, or to a successor Depository selected or approved by the Corporation or to a nominee of such successor Depository.

(b) To the extent permitted by applicable procedures of the Depository, certificates evidencing shares of the Mandatory Convertible Preferred Stock may be issued to represent fractional shares with a liquidation preference of \$100 and integral multiples of \$100 in excess thereof.

The Global Preferred Shares may have notations, legends or endorsements required by law, stock exchange rules, agreements to which the Corporation is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Corporation). The Global Preferred Shares shall be deposited with the Registrar, at its New York office, as custodian for the Depository, and registered in the name of the Depository or a nominee of the Depository, duly executed by the Corporation and countersigned by the Transfer Agent and registered by the Registrar as hereinafter provided. The aggregate number of shares represented by the Global Preferred Shares, or any one Global Preferred Share, may from time to time be increased or decreased by adjustments made on the records of the Registrar and the Depository or its nominee as hereinafter provided. At such time as all interests in a Global Preferred Share have been converted, canceled, repurchased or transferred, such Global Preferred Share shall be, upon receipt thereof, canceled by the Corporation in accordance with standing procedures and existing instructions between the Depository and the Corporation.

This Section 17 shall apply only to a Global Preferred Share deposited with or on behalf of the Depository. The Corporation shall execute and the Registrar shall, in accordance with this Section 17, countersign and deliver one or more Global Preferred Shares in accordance with the terms hereof that (i) shall be registered in the name of Cede & Co. or other nominee of the Depository and (ii) shall be delivered by the Registrar to Cede & Co. or pursuant to instructions received from Cede & Co. or held by the Registrar as custodian for the Depository pursuant to an agreement between the Depository and the Registrar. Members of, or participants in, the Depository (“**Agent Members**”) shall have

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no rights under this Certificate of Designations, with respect to any Global Preferred Share held on their behalf by the Depositary or by the Registrar as the custodian of the Depositary, or under such Global Preferred Share, and the Depositary may be treated by the Corporation, the Registrar and any agent of the Corporation or the Registrar as the absolute owner of such Global Preferred Share for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Corporation, the Registrar or any agent of the Corporation or the Registrar from giving effect to any written certification, proxy or other authorization furnished by the registered holder of the Mandatory Convertible Preferred Stock or impair, as between the Depositary and its Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Share.

An Officer shall sign the certificates evidencing the Mandatory Convertible Preferred Stock for the Corporation, in accordance with the Corporation's Amended and Restated Bylaws and applicable law, by manual, electronic or facsimile signature. If an Officer whose signature is on a share certificate no longer holds that office at the time the Transfer Agent authenticates the certificate, such certificate shall be valid nevertheless. A certificate evidencing shares of Mandatory Convertible Preferred Stock shall not be valid until an authorized signatory of the Transfer Agent manually or electronically countersigns such certificate. The signature shall be conclusive evidence that such certificate has been authenticated under this Certificate of Designations. Each share certificate shall be dated the date of its authentication.

(18). *Reissuance and Retirement.* Shares of Mandatory Convertible Preferred Stock that have been converted in accordance herewith, automatically transferred to the Corporation in accordance herewith following a Remarketing Failure or automatically delivered to the Corporation following an Unsuccessful Final Remarketing pursuant to the Purchase Contract and Pledge Agreement, in each case, shall be cancelled and retired and shall not be reissued as shares of Mandatory Convertible Preferred Stock hereunder, but the number of shares so cancelled and retired shall revert to the status of authorized but unissued shares of Preferred Stock of the Corporation.

(19). *Paying Agent and Conversion Agent.*

(a) The Corporation shall maintain in the Borough of Manhattan, City of New York, State of New York (i) an office or agency where Mandatory Convertible Preferred Stock may be presented for payment (the "**Paying Agent**") and (ii) an office or agency where Mandatory Convertible Preferred Stock may be presented for conversion (the "**Conversion Agent**"). The Transfer Agent shall act as Paying Agent and Conversion Agent, unless another Paying Agent or Conversion Agent is appointed by the Corporation. Initially, Computershare Trust Company, N.A. is appointed by the Corporation as the Paying Agent and the Conversion Agent. The Corporation may appoint the Registrar, the Paying Agent and the Conversion Agent and may appoint one or more additional paying agents and one or more additional conversion agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent and the term "Conversion Agent" includes any additional conversion agent. The Corporation may change any Paying Agent or Conversion Agent without prior notice to any holder. The Corporation shall notify the Registrar and the Holders of the name and address of any Paying Agent or Conversion Agent appointed by the Corporation. If the Corporation fails to appoint or maintain another entity as Paying Agent or Conversion Agent, the Registrar shall act as such. The Corporation or any of its Affiliates may act as Paying Agent, Registrar or Conversion Agent.



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(b) Payments due on the Mandatory Convertible Preferred Stock shall be payable at the office or agency of the Corporation maintained for such purpose in The City of New York and at any other office or agency maintained by the Corporation for such purpose. Payments shall be payable by United States dollar check drawn on, or wire transfer (provided, that appropriate wire instructions have been received by the Registrar at least 15 days prior to the applicable date of payment) to a U.S. dollar account maintained by the holder with, a bank located in New York City; *provided* that at the option of the Corporation, payment of dividends may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Mandatory Convertible Preferred Stock register. Notwithstanding the foregoing, payments due in respect of the Global Preferred Shares shall be payable by wire transfer of immediately available funds in accordance with the procedures of the Depository.

(20). *Headings*. The headings of the subsections of this Certificate of Designations are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

(21). *Rights of Holders*. No person or entity, other than the person or entity in whose name a certificate representing the Mandatory Convertible Preferred Stock is registered, shall have any rights hereunder or with respect to the Mandatory Convertible Preferred Stock. The Corporation shall recognize the registered owner thereof as the sole owner for all purposes, and no other person or entity (other than the Corporation) shall have any benefit, right, claim or remedy hereunder.

(22). *Notices*. All notices or communications in respect of Mandatory Convertible Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations or in the Certificate of Incorporation and by applicable law. Notwithstanding the foregoing, if the shares of Mandatory Convertible Preferred Stock are represented by Global Preferred Shares, such notices shall also be given to the Holders in any manner permitted by DTC or any similar facility used for the settlement of transactions in Mandatory Convertible Preferred Stock.

(23). *Withholding*. Notwithstanding anything to the contrary, the Corporation or any agent of the Corporation shall have the right to deduct and withhold from any payment or distribution (or deemed distribution) made with respect to any share of Mandatory Convertible Preferred Stock (or the delivery of shares of Common Stock and/or cash upon conversion of Mandatory Convertible Preferred Stock) such amounts as are required to be deducted or withheld with respect to the making of such payment or distribution (or delivery) under applicable tax law without liability therefor. To the extent that any amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes as having been paid (or delivered) to the applicable Holder. In the event the Corporation or any agent of the Corporation previously

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remitted any amounts to a governmental entity on account of taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) or delivery with respect to any share of Mandatory Convertible Preferred Stock with respect to an applicable Holder, the Corporation and any such agent shall be entitled to offset any such amounts against any amounts otherwise payable or deliverable to the applicable holder hereunder or under any other instrument or agreement.

(24). *No Preemptive Rights.* The holders of shares of Mandatory Convertible Preferred Stock will have no preemptive rights with respect to any shares of the Corporation's Capital Stock.

(25). *Other Rights.* The shares of Mandatory Convertible Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be signed by the undersigned, its authorized signatory, this 19th day of April, 2021.

NISOURCE INC.

By: /s/ Randy G. Hulen

Name: Randy G. Hulen

Title: Vice President, Investor Relations and  
Treasurer

**EXHIBIT A**

SERIES C MANDATORY CONVERTIBLE PREFERRED STOCK

Number: [\_\_\_\_\_]

[Initial]<sup>1</sup> Number of Shares: [\_\_\_\_\_]

CUSIP NO.: 65473P 857

Series C Mandatory Convertible Preferred Stock  
(par value \$0.01 per share)  
(liquidation preference \$1,000 per share)  
of  
NISOURCE INC.

[INCLUDE FOR GLOBAL PREFERRED SHARES]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATIONS.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

IN THE EVENT OF A REMARKETING FAILURE (AS DEFINED IN THE CERTIFICATE OF DESIGNATIONS) THE MANDATORY CONVERTIBLE PREFERRED STOCK WILL BE AUTOMATICALLY TRANSFERRED TO THE CORPORATION AND CANCELLED FOR NO CONSIDERATION.]

<sup>1</sup> Include for Global Preferred Shares.

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NISOURCE INC., a Delaware corporation (the “**Corporation**”), hereby certifies that [ ]<sup>2</sup>[Cede & Co.]<sup>3</sup>, or registered assigns (the “**Holder**”) is the registered owner of [ ]<sup>4</sup> [a number of]<sup>5</sup> fully paid and non-assessable shares of Preferred Stock of the Corporation designated the “Series C Mandatory Convertible Preferred Stock,” par value \$0.01 per share and liquidation preference \$1,000 per share (the “**Mandatory Convertible Preferred Stock**”) [as set forth in Schedule A attached hereto]<sup>6</sup>. The shares of Mandatory Convertible Preferred Stock are transferable on the books and records of the Registrar, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Mandatory Convertible Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designations of Series C Mandatory Convertible Preferred Stock (the “**Certificate of Designations**”). Capitalized terms used herein but not defined shall have the respective meanings given them in the Certificate of Designations. The Corporation will provide a copy of the Certificate of Designations and the Purchase Contract and Pledge Agreement to a Holder without charge upon written request to the Corporation at its principal place of business. In the case of any conflict between this certificate and the Certificate of Designations, the provisions of the Certificate of Designations shall control and govern.

Reference is hereby made to select provisions of the Mandatory Convertible Preferred Stock set forth on the reverse hereof, and to the Certificate of Designations, which provisions shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designations and is entitled to the benefits thereunder.

Unless the Transfer Agent has properly countersigned this certificate, the shares of Mandatory Convertible Preferred Stock evidenced hereby shall not be entitled to any benefit under the Certificate of Designations or be valid or obligatory for any purpose.

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- 2 Include for certificated shares.
  - 3 Include for Global Preferred Shares.
  - 4 Include for certificated shares.
  - 5 Include for Global Preferred Shares.
  - 6 Include for Global Preferred Shares.

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IN WITNESS WHEREOF, the Corporation has executed this certificate as of the date set forth below.

NISOURCE INC.

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

Name:

Title:

Dated: [\_\_\_\_]

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TRANSFER AGENT'S COUNTERSIGNATURE

This is one of the certificates representing shares of Mandatory Convertible Preferred Stock referred to in the within mentioned Certificate of Designations.

COMPUTERSHARE TRUST COMPANY, N.A.,  
as Transfer Agent

By: \_\_\_\_\_  
Name:  
Title:

Dated: [ ]

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REVERSE OF SECURITY

NISOURCE INC.

Series C Mandatory Convertible Preferred Stock

In connection with a Successful Remarketing, the Board of Directors, after consultation with the Remarketing Agent, may increase the Dividend Rate and/or increase the Minimum Conversion Rate, in each case pursuant to the Certificate of Designations. Following any Dividend Increase Remarketing, Holders of Mandatory Convertible Preferred Stock shall be entitled to receive when, as and if declared by the Board of Directors out of funds legally available for the payment of dividends, cumulative dividends on each share of Mandatory Convertible Preferred Stock at the applicable Dividend Rate on the Liquidation Preference per share of the Mandatory Convertible Preferred Stock, payable in cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at the Corporation's election (subject to the limitations described in the Certificate of Designations).

Unless a Remarketing Failure occurs, the shares of Mandatory Convertible Preferred Stock shall be convertible in the manner and according to the terms set forth in the Certificate of Designations. If a Remarketing Failure occurs, the Mandatory Convertible Preferred Stock that remains outstanding following December 1, 2023 will no longer be convertible and will be automatically transferred to the Corporation and cancelled.

**The Corporation shall furnish to any Holder upon written request and without charge, a full summary statement of the designations, voting rights preferences, limitations and special rights of the shares of each class or series authorized to be issued by the Corporation in so far as they have been fixed and determined.**



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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Mandatory Convertible Preferred Stock evidenced hereby to:

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(Insert assignee's social security or tax identification number)

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(Insert address and zip code of assignee)

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and irrevocably appoints:

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agent to transfer the shares of Mandatory Convertible Preferred Stock evidenced hereby on the books of the Transfer Agent and Registrar. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

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

(Sign exactly as your name appears on the other side of this Series C Mandatory Convertible Preferred Stock Certificate)

Signature Guarantee: \_\_\_\_\_<sup>7</sup>

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<sup>7</sup> Signature must be guaranteed by an "eligible guarantor institution" (i.e., a bank, stockbroker, savings and loan association or credit union) meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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NOTICE OF CONVERSION

(To be Executed by the Holder in order to Convert Series C Mandatory Convertible Preferred Stock)

The undersigned hereby irrevocably elects to convert (the “**Conversion**”) \_\_\_\_\_ shares of Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share (the “**Mandatory Convertible Preferred Stock**”), of NiSource Inc. (hereinafter called the “**Corporation**”), represented by stock certificate No(s). \_\_\_\_\_ (the “**Mandatory Convertible Preferred Stock Certificates**”) into shares of common stock, par value \$0.01 per share, of the Corporation (the “**Common Stock**”), according to the conditions of the Certificate of Designations establishing the terms of the Mandatory Convertible Preferred Stock (the “**Certificate of Designations**”), as of the date written below. Holders that submit shares of Mandatory Convertible Preferred Stock during a Fundamental Change Conversion Period shall be deemed to have exercised their Fundamental Change Conversion Right.

If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Mandatory Convertible Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The Corporation is not required to issue shares of Common Stock until the original Mandatory Convertible Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Corporation or its Transfer Agent.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designations.

Date of Conversion: \_\_\_\_\_

Number of shares of Mandatory Convertible Preferred Stock to be Converted: \_\_\_\_\_

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

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

Address:<sup>8</sup> \_\_\_\_\_

Fax No.: \_\_\_\_\_

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<sup>8</sup> Address where shares of Common Stock and any other payments or certificates shall be sent by the Corporation.

SCHEDULE A<sup>9</sup>

**NiSource Inc.**  
**Global Preferred Share**  
**Series C Mandatory Convertible Preferred Stock**

The initial number of shares of Mandatory Convertible Preferred Stock represented by this Global Preferred Share shall be [\_\_\_\_\_]. The following exchanges of a part of this Global Preferred Share have been made:

Date of Exchange	Amount of decrease in number of shares represented by this Global Preferred Share	Amount of increase in number of shares represented by this Global Preferred Share	Number of shares represented by this Global Preferred Share following such decrease or increase	Signature of authorized officer of Registrar
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<sup>9</sup> Include for Global Preferred Shares.

**Exhibit 4.1**

**PURCHASE CONTRACT AND PLEDGE AGREEMENT**

Dated as of April 19, 2021

between

**NiSource Inc.**

and

**U.S. Bank National Association**

as Purchase Contract Agent,

Collateral Agent, Custodial Agent and Securities Intermediary

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PURCHASE CONTRACT AND PLEDGE AGREEMENT, dated as of April 19, 2021 between NiSource Inc., a Delaware corporation (the “**Company**”), and U.S. Bank National Association, a national banking association, not individually, but acting as purchase contract agent for, and, for purposes of the Pledge created hereby, as attorney-in-fact of, the Holders from time to time of the Units (in such capacities, together with its successors and assigns in such capacities, the “**Purchase Contract Agent**”), as collateral agent hereunder for the benefit of the Company (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”), as custodial agent (in such capacity, together with its successors in such capacity, the “**Custodial Agent**”), as paying agent and as securities intermediary (as defined in Section 8-102(a)(14) of the UCC) with respect to the Collateral Account (in such capacity, together with its successors in such capacity, the “**Securities Intermediary**”).

#### RECITALS

WHEREAS, the Company has duly authorized the execution and delivery of this Agreement and the Certificates evidencing the Units;

WHEREAS, all things necessary to make the Purchase Contracts, when the Certificates are executed by the Company and authenticated, executed on behalf of the Holders and delivered by the Purchase Contract Agent, as provided in this Agreement, the valid obligations of the Company and the Holders, and to constitute these presents a valid agreement of the Company, in accordance with its terms, have been done; and

WHEREAS, pursuant to the terms of this Agreement and the Purchase Contracts, the Holders of the Units have irrevocably authorized the Purchase Contract Agent, as attorney-in-fact of such Holders, among other things, to execute and deliver this Agreement on behalf of such Holders as the attorney-in-fact of such Holders and to grant the Pledge provided herein of the Collateral to secure the Obligations.

NOW, THEREFORE, the parties hereto agree as follows:

#### ARTICLE 1

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article 1 have the meanings assigned to them in this Article 1 and include the plural as well as the singular, and nouns and pronouns of the masculine gender include the feminine and neuter genders;

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

(c) the words “**herein**,” “**hereof**” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or other subdivision;

(d) the following terms, which are defined in the UCC, shall have the meanings set forth therein: “**certificated security**,” “**control**,” “**financial asset**,” “**entitlement order**,” “**securities account**” and “**security entitlement**”; and

(e) the following terms have the meanings given to them in this Section 1.01(e):

“**Account Agreement**” has the meaning set forth in Section 12.05.

“**Act**” has the meaning, with respect to any Holder, set forth in Section 1.04(a).

“**Affiliate**” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agreement**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

“**Applicable AML Law**” has the meaning set forth in Section 16.07.

“**Applicable Market Value**” means the average of the Daily VWAPs of the Common Stock during the Market Value Averaging Period, subject to Section 5.12; *provided* that if 40 Trading Days for the Common Stock have not occurred during the period from, and including, the first day of the Market Value Averaging Period to, and including, the second Scheduled Trading Day immediately preceding the Purchase Contract Settlement Date, all remaining Trading Days in the Market Value Averaging Period shall be deemed to occur on such second Scheduled Trading Day, and the Daily VWAP for each of those remaining Trading Days shall be the Daily VWAP on such second Scheduled Trading Day or, if such day is not a Trading Day, the Closing Price of the Common Stock as of such day.

“**Applicable Ownership Interest in Mandatory Convertible Preferred Stock**” means a 1/10, or 10%, undivided beneficial ownership interest in one share of Mandatory Convertible Preferred Stock that is a component of a Corporate Unit.

“**Applicable Ownership Interest in the Treasury Portfolio**” means, with respect to a Corporate Unit and the Treasury Portfolio, a 1/10, or 10%, undivided beneficial ownership interest in \$1,000 face amount of U.S. Treasury securities (or principal or interest strips thereof) included in the Treasury Portfolio that matures on or prior to the Purchase Contract Settlement Date.

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“**Applicable Procedures**” means, with respect to any payment, tender, redemption, transfer or exchange of or for beneficial interests in any Global Certificate, the rules and procedures of the Depository that apply to such payment, tender, redemption, transfer or exchange.

“**Applicable Remarketing Period**” means any of (i) any Optional Remarketing Period specified by the Company pursuant to Section 5.02(a)(i) or (ii) the Final Remarketing Period, as the context requires.

“**Applicants**” has the meaning set forth in Section 7.12(b).

“**Authorized Officer**” means the Company’s Chief Executive Officer, its President or one of its Vice Presidents or its Treasurer or one of its Assistant Treasurers, or any other officer or agent of the Company duly authorized by the Board of Directors to act in respect of this Agreement.

“**Bankruptcy Code**” means Title 11 of the United States Code, or any other law of the United States that from time to time provides a uniform system of bankruptcy laws.

“**Beneficial Owner**” means, with respect to a Book-Entry Interest, a Person who is the beneficial owner of such Book-Entry Interest as reflected on the books of the Depository or on the books of a Person maintaining an account with such Depository (directly as a Depository Participant or as an indirect participant, in each case in accordance with the rules of such Depository).

“**Blackout Period**” means the period (i) if the Company has elected to conduct an Optional Remarketing, from 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Optional Remarketing Period to and including the Remarketing Settlement Date of such Optional Remarketing Period or the date the Company announces that no Successful Optional Remarketing has occurred during such Optional Remarketing Period, (ii) following any Successful Remarketing (unless a condition precedent set forth in the Remarketing Agreement is not fulfilled prior to the scheduled Remarketing Settlement Date for such Remarketing), (iii) the period from 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period until the open of business on the Business Day immediately succeeding the last day of the Final Remarketing Period and (iv) the period from and after 4:00 p.m., New York City time, on the second Business Day immediately prior to the Purchase Contract Settlement Date.

“**Board of Directors**” means the board of directors of the Company or a duly authorized committee of that board.

“**Board Resolution**” means one or more resolutions of the Board of Directors, a copy of which has been certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Purchase Contract Agent.

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“**Book-Entry Interest**” means a beneficial interest in a Global Certificate, registered in the name of a Depository or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Depository as described in Section 3.06.

“**Business Day**” means any day other than a Saturday or a Sunday or any other day on which banking institutions and trust companies in New York City, New York are authorized or required by law or executive order to remain closed.

“**Cash**” or “**cash**” means any coin or currency of the United States as at the time shall be legal tender for payment of public and private debts.

“**Cash Settled Unit**” means, following the substitution of Cash for Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock as Collateral to secure a Holder’s obligations under the Purchase Contract, the collective rights and obligations of a Holder of a Cash Settled Units Certificate in respect of such Cash, subject to the Pledge thereof, and the related Purchase Contract.

“**Cash Settled Units Certificate**” means a certificate evidencing the rights and obligations of a Holder in respect of the number of Cash Settled Units specified on such certificate.

“**Certificate**” means a Corporate Units Certificate, a Treasury Units Certificate or a Cash Settled Units Certificate, as the case may be.

“**Certificate of Designations**” means the certificate of designations, dated as of April 19, 2021, amending the Company’s Amended and Restated Certificate of Incorporation creating the Mandatory Convertible Preferred Stock.

“**close of business**” means 5:00 p.m., New York City time.

“**Closing Price**” per share of Common Stock means, on any date of determination, the closing sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “**Closing Price**” shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or similar organization. If the Common Stock is not so quoted, the “**Closing Price**” shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

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

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“**Collateral**” means the collective reference to:

(i) the Collateral Account and all investment property and other financial assets and Cash from time to time credited to the Collateral Account and all security entitlements with respect thereto, including, without limitation, (A) the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and security entitlements relating thereto (and the Mandatory Convertible Preferred Stock and security entitlements relating thereto delivered to the Collateral Agent in respect of such Applicable Ownership Interests in Mandatory Convertible Preferred Stock), (B) the Applicable Ownership Interests in the Treasury Portfolio of the Holders with respect to the Treasury Portfolio that is a component of the Corporate Units from time to time and security entitlements relating thereto, (C) any Treasury Securities and security entitlements relating thereto Transferred to the Collateral Agent, for the credit of the Collateral Account, from time to time in connection with the creation of Treasury Units in accordance with Section 3.12(a) hereof and (D) any Cash Transferred to the Collateral Agent, for the credit of the Collateral Account, from time to time in connection with the creation of Cash Settled Units in accordance with Section 3.13(a) hereof or pursuant to Section 5.02(b)(vi) (not including, for the avoidance of doubt, the excess proceeds to be remitted to Holders as described therein);

(ii) all Proceeds of any of the foregoing (whether such Proceeds arise before or after the commencement of any proceeding under any applicable bankruptcy, insolvency or other similar law, by or against the pledgor or with respect to the pledgor); and

(iii) all powers and rights now owned or hereafter acquired under or with respect to the Collateral.

“**Collateral Account**” means the non-interest bearing securities account or any related deposit account of U.S. Bank National Association, as Collateral Agent, maintained on the books of the Securities Intermediary and designated “NiSource, Inc. Collateral Account”, and any successor securities account of the Collateral Agent or a successor Collateral Agent.

“**Collateral Agent**” means the Person named as “**Collateral Agent**” in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Collateral Agent shall have become such pursuant to this Agreement, and thereafter “Collateral Agent” shall mean the Person who is then the Collateral Agent hereunder.

“**collateral event of default**” has the meaning set forth in Section 13.01(b).

“**Collateral Substitution**” means (i) with respect to the Corporate Units, the substitution of each 10 Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock included in such Corporate Units with (x) with respect to Treasury Units, a Treasury Security for each 10 Corporate Units for which Collateral Substitution is being effected, or (y) with respect to Cash Settled Units, Cash in an aggregate amount equal to \$1,000, for each 10 Corporate Units for which Collateral Substitution is being effected, (ii) with respect to the Treasury Units, the substitution of each Treasury Security included in such Treasury Units with a share of Mandatory Convertible Preferred Stock for each 10 Treasury Units for which Collateral Substitution is being effected, or (iii) with respect to the Cash Settled Units, the substitution of each \$1,000 of Cash included in such Cash Settled Units with a share of Mandatory Convertible Preferred Stock for each 10 Cash Settled Units for which Collateral Substitution is being effected.

“**Common Stock**” means the common stock, \$0.01 par value, of the Company.

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“**Company**” means the Person named as the “**Company**” in the first paragraph of this Agreement until a successor shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “**Company**” shall mean such successor.

“**Compounded Contract Adjustment Payments**” has the meaning set forth in Section 5.10(a).

“**Constituent Person**” means, in respect of any Reorganization Event, a Person with which the Company is consolidated or into which the Company is merged or which merged into the Company or to which the relevant sale or transfer was made, as the case may be, in connection with such Reorganization Event.

“**Contract Adjustment Payment Date**” means March 1, June 1, September 1 and December 1 of each year, commencing on June 1, 2021.

“**Contract Adjustment Payments**” means the payments payable by the Company on the Contract Adjustment Payment Dates in respect of each Purchase Contract, at a rate per year of 7.75% of the Stated Amount per Purchase Contract.

“**Corporate Trust Office**” means the office of the Purchase Contract Agent at CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103, Attention: Global Corporate Trust, and such office shall also include the office or agency of the Purchase Contract Agent located at 111 Fillmore Avenue, St. Paul, MN 55107, Attention: Global Corporate Trust, or such other address as the Purchase Contract Agent may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Purchase Contract Agent as designated by written notice to the Holders and the Company (or such other address as such successor Purchase Contract Agent may designate from time to time by notice to the Holders and the Company), which office must be located in the continental United States of America.

“**Corporate Unit**” means the collective rights and obligations of a Holder of a Corporate Units Certificate in respect of the Applicable Ownership Interest in Mandatory Convertible Preferred Stock or the Applicable Ownership Interest in the Treasury Portfolio, as the case may be, subject in each case to the Pledge thereof, and the related Purchase Contract.

“**Corporate Units Certificate**” means a certificate evidencing the rights and obligations of a Holder in respect of the number of Corporate Units specified on such certificate.

“**Custodial Agent**” means the Person named as Custodial Agent in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Custodial Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “**Custodial Agent**” shall mean the Person who is then the Custodial Agent hereunder.

“**Daily VWAP**” means, in respect of the Common Stock, on any Trading Day, the per share volume weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NI <Equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading on such Trading Day until the scheduled close of trading on such Trading Day (or if such VWAP is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company).



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“**Depository**” means a clearing agency registered under Section 17A of the Exchange Act that is designated to act as Depository for the Units as contemplated by [Section 3.06](#) and [Section 3.07](#).

“**Depository Participant**” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book entry transfers and pledges of securities deposited with the Depository.

“**Dividend Payment Date**” has the meaning set forth in the Certificate of Designations.

“**DTC**” means The Depository Trust Company.

“**Early Settlement**” has the meaning set forth in [Section 5.06\(a\)](#).

“**Early Settlement Amount**” has the meaning set forth in [Section 5.06\(b\)](#).

“**Early Settlement Averaging Period**” with respect to any Early Settlement means the 40 consecutive Trading Day period beginning on, and including, the Trading Day immediately following the relevant Early Settlement Date; *provided* that if 40 Trading Days for the Common Stock have not occurred during the period from, and including, the first day of the Early Settlement Averaging Period to, and including, the second Scheduled Trading Day immediately preceding the Purchase Contract Settlement Date, all remaining Trading Days in the Early Settlement Averaging Period shall be deemed to occur on such second Scheduled Trading Day, and the Daily VWAP for each of those remaining Trading Days shall be the Daily VWAP on such second Scheduled Trading Day or, if such day is not a Trading Day, the Closing Price of the Common Stock as of such day.

“**Early Settlement Date**” has the meaning set forth in [Section 5.06\(b\)](#).

“**Effective Date**” has the meaning specified in [Section 5.04\(b\)](#); *provided* that, for purposes of [Section 5.11](#), “**effective date**” means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Ex-Dividend Date**” when used with respect to any issuance or distribution on the Common Stock or any other security, means the first date on which the Common Stock or such other security, as applicable, trades, regular way, on the principal U.S. securities exchange or market on which the Common Stock or such other security, as applicable, is listed or traded at that time, without the right to receive the issuance or distribution in question, from the issuer of such security or, if applicable, from the seller of Common Stock or such security, as the case may be, on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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“**Exchange Act**” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“**Exchange Property**” has the meaning set forth in Section 5.12.

“**Exchange Property Unit**” means, in respect of any Reorganization Event, the kind and amount of Exchange Property receivable in such Reorganization Event (without any interest thereon, and without any right to dividends or distribution thereon which have a record date that is prior to the applicable settlement date) per share of Common Stock by a holder of Common Stock that is not a Constituent Person, or an Affiliate of a Constituent Person, to the extent such Reorganization Event provides for different treatment of Common Stock held by the Constituent Person and/or the Affiliates of the Constituent Person, on the one hand, and non-Affiliates of a Constituent Person, on the other hand.

“**Executed Documentation**” has the meaning set forth in Section 1.05.

“**Expiration Date**” has the meaning set forth in Section 1.04(e).

“**Extension Period**” has the meaning set forth in Section 5.10(a).

“**Final Remarketing**” means any Remarketing of the Mandatory Convertible Preferred Stock that occurs during the Final Remarketing Period by the Remarketing Agent(s) pursuant to the Remarketing Agreement.

“**Final Remarketing Date**” means the date that the shares of the Mandatory Convertible Preferred Stock offered in a Final Remarketing are priced by the Remarketing Agent(s).

“**Final Remarketing Period**” means the five Business Day period beginning on, and including, the thirteenth Business Day, and ending on, and including, the ninth Business Day immediately preceding the Purchase Contract Settlement Date.

“**Five-Day Average Price**” means the average of the Daily VWAPs per share of Common Stock over the five consecutive Trading Day period ending on the second Trading Day immediately preceding the applicable Contract Adjustment Payment Date or other date in respect of which Contract Adjustment Payments are being paid.

“**Fundamental Change**” means the occurrence after the Units are originally issued of any of the following:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of Common Stock representing more than 50% of the voting power of Common Stock;

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(ii) (A) the Company is involved in a consolidation with or merger into any other Person, or any merger of another Person into the Company, or any other similar transaction or series of related transactions (other than a merger, consolidation or similar transaction that does not result in the conversion or exchange of outstanding shares of Common Stock), in each case, in which 90% or more of the outstanding shares of Common Stock are exchanged for or converted into cash, securities or other property, greater than 10% of the value of which consists of cash, securities or other property that is not (or will not be upon or immediately following the effectiveness of such consolidation, merger or other transaction) common stock listed on the New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors) or (B) the consummation of any sale, lease or other transfer in one transaction or a series of related transactions of all or substantially all of the Company's consolidated assets to any Person other than one of the Company's Subsidiaries;

(iii) the Common Stock ceases to be listed on at least one of the New York Stock Exchange, the Nasdaq Global Select Market and the Nasdaq Global Market (or any of their respective successors); or

(iv) the Company's shareholders approve the Company's liquidation, dissolution or termination.

“**Fundamental Change Early Settlement**” has the meaning set forth in [Section 5.04\(a\)](#).

“**Fundamental Change Early Settlement Date**” has the meaning set forth in [Section 5.04\(a\)\(i\)](#).

“**Fundamental Change Early Settlement Right**” has the meaning set forth in [Section 5.04\(a\)](#).

“**Global Certificate**” means a Certificate that evidences all or part of the Units and is registered in the name of the Depository or a nominee thereof.

“**Global Preferred Share**” has the meaning set forth in the Certificate of Designations.

“**Hague Securities Convention**” means the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649.

“**Holder**” means, with respect to a Unit, the Person in whose name the Unit evidenced by a Certificate is registered in the Security Register; *provided, however*, that solely for the purpose of determining whether the Holders of the requisite number of Units have voted on any matter (and not for any other purpose hereunder), if the Unit remains in the form of one or more Global Certificates and if the Depository that is the registered holder of such Global Certificate has sent an omnibus proxy assigning voting rights to the Depository Participants to whose accounts the Units are credited on the record date, the term “**Holder**” shall mean such Depository Participant acting at the direction of the Beneficial Owners.

“**Increased Balance**” has the meaning set forth in [Section 12.07\(b\)](#).

“**Increased Dividend Rate**” means, in connection with a Remarketing, the Dividend Rate (as such term is defined in the Certificate of Designations) per annum rounded to the nearest one thousandth (0.001) of one percent applicable to the Mandatory Convertible Preferred Stock if such Remarketing is a Successful Remarketing if and as determined by the Company pursuant to the terms of this Agreement and the relevant Remarketing Agreement.

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“**Increased Minimum Conversion Rate**” means, in connection with a Remarketing, a number of shares of Common Stock per share of the Mandatory Convertible Preferred Stock equal to \$1,000 *divided by* 117.5% of the Closing Price on the pricing date of such Remarketing (rounded to the nearest ten-thousandth of a share) applicable to the Mandatory Convertible Preferred Stock if such Remarketing is a Successful Remarketing if and as determined by the Company pursuant to the terms of this Agreement and the relevant Remarketing Agreement.

“**Increased Rates**” means, collectively, in connection with a Remarketing, the Increased Minimum Conversion Rate, if any, and the Increased Dividend Rate, if any, in each case, applicable to such Remarketing.

“**Indebtedness**” means indebtedness of any kind of the Company unless the instrument under which such indebtedness is incurred expressly provides that it is on a parity in right of payment with or subordinate in right of payment to the Contract Adjustment Payments.

“**Indemnitees**” has the meaning set forth in [Section 7.07\(b\)](#).

“**Initial Price**” has the meaning set forth in the Certificate of Designations.

“**Issuer Order**” or “**Issuer Request**” means a written order or request signed in the name of the Company by an Authorized Officer and delivered to the Purchase Contract Agent.

“**Losses**” has the meaning set forth in [Section 15.08\(b\)](#).

“**Make-Whole Shares**” has the meaning set forth in [Section 5.04\(a\)](#).

“**Mandatory Convertible Preferred Stock**” means the series of preferred stock of the Company designated as “Series C Mandatory Convertible Preferred Stock,” par value \$0.01 per share, with a liquidation preference of \$1,000 per share created pursuant to the Certificate of Designations.

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

“**Market Value Averaging Period**” means the 40 consecutive Trading Day period beginning on, and including, the 41st Scheduled Trading Day immediately preceding the Purchase Contract Settlement Date.

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“**Maximum Conversion Rate**” has the meaning set forth in the Certificate of Designations.

“**Maximum Settlement Rate**” has the meaning set forth in Section 5.01(a)(i).

“**Minimum Conversion Rate**” has the meaning set forth in the Certificate of Designations.

“**Minimum Stock Price**” has the meaning set forth in Section 5.04(b).

“**Notice of a Final Remarketing**” has the meaning set forth in Section 5.02(b)(ii).

“**NYSE**” means The New York Stock Exchange and its successors.

“**Obligations**” means, with respect to each Holder, all obligations and liabilities of such Holder under such Holder’s Purchase Contract and this Agreement or any other document made, delivered or given in connection herewith or therewith, in each case whether on account of principal, interest (including, without limitation, interest accruing before and after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to such Holder, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees, expenses and disbursements of counsel to the Company or the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, or the Securities Intermediary that are required to be paid by the Holder pursuant to the terms of any of the foregoing agreements).

“**Officer’s Certificate**” means a certificate signed by an Authorized Officer and delivered to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent or the Securities Intermediary, as applicable. Any Officer’s Certificate delivered with respect to compliance with a condition or covenant provided for in this Agreement shall include the information set forth in the second paragraph of Section 1.02 hereof.

“**open of business**” means 9:00 a.m., New York City time.

“**Opinion of Counsel**” means a written opinion of counsel, who may be counsel to the Company (and who may be an employee of the Company). An opinion of counsel may rely on certificates as to matters of fact.

“**Optional Remarketing**” means any Remarketing of the Mandatory Convertible Preferred Stock that occurs during the Optional Remarketing Window by the Remarketing Agent(s) pursuant to the Remarketing Agreement.

“**Optional Remarketing Date**” means the date that the shares of the Mandatory Convertible Preferred Stock offered in an Optional Remarketing are priced by the Remarketing Agent(s).

“**Optional Remarketing Period**” has the meaning specified in Section 5.02(a)(i).

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“**Optional Remarketing Settlement Date**” means the third Business Day following the Optional Remarketing Date, or such other date after the third Business Day following the Optional Remarketing Date as the Company and the Remarketing Agent agree to.

“**Optional Remarketing Window**” means the period from and including September 1, 2023 and ending on and including November 3, 2023.

“**Outstanding**” means, as of any date of determination, all Units evidenced by Certificates theretofore authenticated, executed and delivered under this Agreement, except:

(i) all Units, if a Termination Event has occurred;

(ii) Units evidenced by Certificates theretofore cancelled by the Purchase Contract Agent or delivered to the Purchase Contract Agent for cancellation or deemed cancelled pursuant to the provisions of this Agreement; and

(iii) Units evidenced by Certificates in exchange for or in lieu of which other Certificates have been authenticated, executed on behalf of the Holder and delivered pursuant to this Agreement, other than any such Certificate in respect of which there shall have been presented to the Purchase Contract Agent proof satisfactory to it that such Certificate is held by a protected purchaser in whose hands the Units evidenced by such Certificate are valid obligations of the Company;

*provided, however,* that in determining whether the Holders of the requisite number of the Units have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Units owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding Units, except that, in determining whether the Purchase Contract Agent shall be authorized and protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Units that a Responsible Officer of the Purchase Contract Agent actually knows to be so owned shall be so disregarded. Units so owned that have been pledged in good faith may be regarded as Outstanding Units if the pledgee establishes to the satisfaction of the Purchase Contract Agent the pledgee’s right so to act with respect to such Units and that the pledgee is not the Company or any Affiliate of the Company.

“**Permitted Investments**” means any one of the following, but, except for clause (4) below, in any case each investment shall not exceed 5% of the total debt outstanding of any single issuer:

(1) any evidence of indebtedness with an original maturity of 365 days or less issued, or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States of America is pledged in support of the timely payment thereof or such indebtedness constitutes a general obligation of it);

(2) deposits, demand deposits or certificates of deposit or acceptances with an original maturity of 365 days or less of any institution which is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500 million at the time of deposit and having a rating at the time of deposit at least equal to “**A-1**” by Standard & Poor’s Ratings Services (“**S&P**”) and at least equal to “**P-1**” by Moody’s Investors Service, Inc. (“**Moody’s**”) (and which may include the institution acting as the Collateral Agent);

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(3) investments in commercial paper, other than commercial paper issued by the Company or its Affiliates, of any corporation incorporated under the laws of the United States or any State thereof, which commercial paper has a rating at the time of purchase at least equal to “A-1” by S&P or at least equal to “P-1” by Moody’s; and

(4) investments in money market funds (including, but not limited to, money market funds managed by the institution acting as the Collateral Agent or an affiliate of the institution acting as the Collateral Agent) registered under the Investment Company Act of 1940, as amended, rated in the highest applicable rating category by S&P or Moody’s.

Obligations issued by the Purchase Contract Agent or any of its affiliates shall qualify as Permitted Investments if they otherwise fall under the categories described above. Notwithstanding the foregoing, Permitted Investments shall be limited to those instruments readily obtainable and routinely offered by the Purchase Contract Agent’s Global Corporate Trust.

“**Person**” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, national association, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity of whatever nature.

“**Plan**” means an employee benefit plan that is subject to ERISA, a plan or individual retirement account that is subject to Section 4975 of the Code or any entity whose assets are considered assets of any such plan.

“**Pledge**” means the lien and security interest in the Collateral created by this Agreement.

“**Pledge Indemnitees**” has the meaning set forth in Section 15.08(b).

“**Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock**” means the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

“**Pledged Applicable Ownership Interests in the Treasury Portfolio**” means the U.S. Treasury securities described in the definition of Applicable Ownership Interests in the Treasury Portfolio and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge.

“**Pledged Cash**” means the Cash credited to the Collateral Account and not then released from the Pledge.

“**Pledged Convertible Preferred Share**” has the meaning set forth in Section 12.07(b).

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“**Pledged Treasury Securities**” means Treasury Securities and security entitlements with respect thereto from time to time credited to the Collateral Account and not then released from the Pledge and any Proceeds thereon.

“**Predecessor Corporate Units Certificate**” of any particular Corporate Units Certificate means every previous Corporate Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Corporate Units evidenced thereby; and, for the purposes of this definition, any Corporate Units Certificate authenticated and delivered under Section 3.09 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Corporate Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Corporate Units Certificate.

“**Predecessor Treasury Units Certificate**” of any particular Treasury Units Certificate means every previous Treasury Units Certificate evidencing all or a portion of the rights and obligations of the Company and the Holder under the Treasury Units evidenced thereby; and, for the purposes of this definition, any Treasury Units Certificate authenticated and delivered under Section 3.09 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Treasury Units Certificate shall be deemed to evidence the same rights and obligations of the Company and the Holder as the mutilated, destroyed, lost or stolen Treasury Units Certificate.

“**Primary Treasury Dealer**” means a primary U.S. government securities dealer.

“**Pro Rata Portion**” of each Treasury Unit on any date means a fraction, expressed as a percentage rounded to the nearest one-thousandth of a percent, the numerator of which is one and the denominator of which is the total number of Outstanding Treasury Units on such date.

“**Proceeds**” has the meaning ascribed thereto in the UCC and includes, without limitation, all interest, dividends, Cash, instruments, securities, financial assets and other property received, receivable or otherwise distributed upon the sale (including, without limitation, any Remarketing), exchange, collection, maturity or disposition of any financial assets from time to time credited to the Collateral Account.

“**Prospectus**” means the prospectus relating to the delivery of shares or any securities in connection with an Early Settlement pursuant to Section 5.06(a) or a Fundamental Change Early Settlement of Purchase Contracts pursuant to Section 5.04, in the form in which first filed, or transmitted for filing, with the Securities and Exchange Commission after the effective date of the Registration Statement pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein as of the date of such Prospectus.

“**Purchase Contract**” means, with respect to any Unit, the contract forming a part of such Unit and obligating the Company to (i) sell to the Holder, and the Holder of such Unit to purchase from the Company, shares of Common Stock and (ii) pay the Holder thereof Contract Adjustment Payments, subject to the Company’s right to defer Contract Adjustment Payments pursuant to Section 5.10, in each case on the terms and subject to the conditions set forth in Article 5 hereof.



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“**Purchase Contract Agent**” means the Person named as the “Purchase Contract Agent” in the first paragraph of this Agreement, acting in its capacity as such hereunder, until a successor Purchase Contract Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “**Purchase Contract Agent**” shall mean such Person or any subsequent successor who is appointed pursuant to this Agreement. For the avoidance of doubt, the Purchase Contract Agent shall also serve as the paying agent and Security Registrar as required hereunder.

“**Purchase Contract Settlement Date**” means December 1, 2023.

“**Purchase Price**” has the meaning set forth in [Section 5.01\(a\)](#).

“**Quotation Agent**” means any Primary Treasury Dealer selected by the Company.

“**Record Date**” for any distribution and any Contract Adjustment Payment payable on any Contract Adjustment Payment Date means the fifteenth day of the calendar month immediately preceding the calendar month in which the relevant Contract Adjustment Payment Date falls (whether or not a Business Day) or if the Units are held in global book-entry form, the “Record Date” means the Business Day immediately preceding the applicable Contract Adjustment Payment Date; *provided* that for purposes of [Section 5.11](#), “Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

“**Reduced Balance**” has the meaning set forth in [Section 12.07\(b\)](#).

“**Reference Dividend**” has the meaning set forth in [Section 5.11\(d\)](#).

“**Reference Price**” means \$24.51, subject to adjustment as provided herein.

“**Registration Statement**” means (i) in respect of any Early Settlement or Fundamental Change Early Settlement, a registration statement under the Securities Act prepared by the Company covering, *inter alia*, the delivery by the Company of any securities in connection with an Early Settlement on the Early Settlement Date under [Section 5.06](#) or a Fundamental Change Early Settlement on the Fundamental Change Early Settlement Date under [Section 5.04\(a\)](#), and (ii) in respect of any Contract Adjustment Payment made in shares of Common Stock (in whole or in part), a registration statement under the Securities Act prepared by the Company covering, *inter alia*, the issuance of or resales of shares of Common Stock issued as a Contract Adjustment Payment pursuant to [Section 5.09\(e\)\(i\)](#), in each case, including all exhibits thereto and the documents incorporated by reference in the prospectus contained in such registration statement, and any post-effective amendments thereto.

“**Released Share**” has the meaning set forth in [Section 12.07\(b\)](#).

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“**Remarketing**” means any remarketing of the Mandatory Convertible Preferred Stock pursuant to the Remarketing Agreement.

“**Remarketing Agent(s)**” has the meaning set forth in the Certificate of Designations.

“**Remarketing Agreement**” means a Remarketing Agreement to be entered into between the Company and one or more Remarketing Agents setting forth the terms of a Remarketing.

“**Remarketing Date**” means the date the Mandatory Convertible Preferred Stock offered in an Optional Remarketing Period or the Final Remarketing Period are priced by the Company and the Remarketing Agent(s).

“**Remarketing Failure**” means the occurrence of an Unsuccessful Final Remarketing.

“**Remarketing Fee**” means, in the event of a Successful Remarketing, a remarketing fee, if any, paid by the Company to the Remarketing Agent(s) to be agreed upon in writing by the Company and the Remarketing Agent(s) prior to any Remarketing pursuant to the Remarketing Agreement.

“**Remarketing Price**” means (i) in the case of an Optional Remarketing, the sum of (x) 100% of the Treasury Portfolio Purchase Price and (y) the Separate Shares Purchase Price (if any) and (ii) in the case of the Final Remarketing, \$1,000 *multiplied by* the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock and Separate Shares of Mandatory Convertible Preferred Stock to be remarketed as determined by the Remarketing Agent.

“**Remarketing Price Per Share**” means, for each share of Mandatory Convertible Preferred Stock, an amount in Cash equal to the quotient of the Treasury Portfolio Purchase Price *divided by* the number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are held as components of Corporate Units and remarketed in an Optional Remarketing.

“**Remarketing Settlement Date**” means (i) in the case of a Successful Optional Remarketing occurring during an Optional Remarketing Period, the Optional Remarketing Settlement Date for such Successful Optional Remarketing and (ii) in the case of the Final Remarketing, the third Business Day following the Final Remarketing Date, or such other date after the third Business Day following the Final Remarketing Date as the Company and the Remarketing Agent(s) agree to, but in no event later than the Purchase Contract Settlement Date.

“**Reorganization Event**” has the meaning specified in Section 5.12

“**Responsible Officer**” means, when used with respect to the Purchase Contract Agent, any officer of the Purchase Contract Agent including any managing director, director, vice president, assistant vice president, assistant secretary, associate or any other officer or assistant officer of the Purchase Contract Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, with responsibility for the administration of this Agreement located at the Corporate Trust Office of the Purchase Contract Agent, who shall have direct responsibility for the administration of this Agreement,

and for the purposes of Section 7.01(b)(ii) and the *proviso* of Section 7.02 shall also include any other officer of the Purchase Contract Agent to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject. The same definition applies equally to any Responsible Officer of the Collateral Agent, Custodial Agent and Securities Intermediary.

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day.

“**Securities Act**” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time, and the rules and regulations promulgated thereunder.

“**Securities Intermediary**” means the Person named as Securities Intermediary in the first paragraph of this Agreement, acting in such capacity hereunder, until a successor Securities Intermediary shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “**Securities Intermediary**” shall mean such successor or any subsequent successor.

“**Security Register**” and “**Security Registrar**” have the respective meanings set forth in Section 3.05.

“**Separate Account**” has the meaning specified in Section 5.02(a)(v).

“**Separate Shares of Mandatory Convertible Preferred Stock**” means shares of Mandatory Convertible Preferred Stock that have been released from the Pledge pursuant to the terms hereof and therefore no longer underlie Corporate Units.

“**Separate Shares Purchase Price**” means, for the shares of Mandatory Convertible Preferred Stock remarketed in any Optional Remarketing, the amount in Cash equal to the product of (i) the Remarketing Price Per Share and (ii) the aggregate number of Separate Shares of Mandatory Convertible Preferred Stock remarketed in such Optional Remarketing.

“**Settlement Rate**” has the meaning set forth in Section 5.01(a).

“**Solicitation Agent**” has the meaning set forth in Section 4.03(e).

“**Spin-Off**” has the meaning specified in Section 5.11(c)(2).

“**Stated Amount**” means \$100.

“**Stock Price**” has the meaning specified in Section 5.04(b).

“**Subjected Share**” has the meaning set forth in Section 12.07(b).

“**Subsidiary**” means a corporation, partnership, limited liability company or other entity more than 50% of the outstanding voting equity of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more

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Subsidiaries. For the purposes of this definition, “**voting equity**” means stock or other ownership interests having ordinary voting power for the election of directors or other managers of a corporation, partnership, limited liability company or other entity, whether at all times or only so long as no senior class of stock or other ownership interests has such voting power by reason of any contingency.

“**Successful Final Remarketing**” has the meaning set forth in Section 5.02(b)(v).

“**Successful Optional Remarketing**” has the meaning set forth in Section 5.02(a)(iv).

“**Successful Remarketing**” means, as applicable, a Successful Optional Remarketing or a Successful Final Remarketing.

“**Termination Date**” means the date, if any, on which a Termination Event occurs.

“**Termination Event**” means that at any time on or prior to the Purchase Contract Settlement Date:

(i) the Company institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof and if such proceeding, judgment, petition or order shall have been entered more than 60 days prior to the Purchase Contract Settlement Date, such proceeding, judgment, petition or order shall have continued undischarged and unstayed for a period of 60 days; or

(ii) the Company seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets.

“**Threshold Appreciation Price**” has the meaning set forth in the Certificate of Designations.

“**TRADES**” means the Treasury/Reserve Automated Debt Entry System maintained by the Federal Reserve Bank of New York pursuant to the TRADES Regulations.

“**TRADES Regulations**” means the regulations of the United States Department of the Treasury, published at 31 C.F.R. Part 357, as amended from time to time. Unless otherwise defined herein, all terms defined in the TRADES Regulations are used herein as therein defined.

“**Trading Day**” means (a) a day (i) on which the NYSE, or, if the Common Stock is not then listed on the NYSE, the principal exchange or quotation system on which the Common Stock is listed or admitted for trading, is scheduled to open for business and (ii) on which there has not occurred or does not exist a Market Disruption Event, or (b) if the Common Stock is not so listed or admitted for trading, a “Trading Day” means a Business Day.

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“**Transaction Documents**” means this Agreement, the Remarketing Agreement, the Units, the Mandatory Convertible Preferred Stock and the Certificate of Designations, in each case as amended or supplemented from time to time.

“**Transfer**” means (i) in the case of certificated securities in registered form, delivery as provided in Section 8-301(a) of the UCC, indorsed to the transferee or in blank by an effective endorsement; (ii) in the case of Treasury Securities, registration of the transferee as the owner of such Treasury Securities on TRADES; and (iii) in the case of security entitlements, including, without limitation, security entitlements with respect to Treasury Securities, a securities intermediary indicating by book-entry that such security entitlement has been credited to the transferee’s securities account.

“**Transfer Agent**” means Computershare Trust Company, N.A. as registrar and transfer agent for the Mandatory Convertible Preferred Stock, or any successor thereto as described in the Certificate of Designations.

“**Treasury Portfolio**” means U.S. Treasury securities (or principal or interest strips thereof) that mature on or prior to the Purchase Contract Settlement Date in an aggregate amount at maturity equal to \$1,000 *multiplied by* the number of shares of Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock included in the Corporate Units on the Optional Remarketing Date; *provided* that if on the Optional Remarketing Date the U.S. Treasury securities (or principal or interest strips thereof) that are to be included in the Treasury Portfolio in connection with a Successful Optional Remarketing have a yield that is less than zero, the Treasury Portfolio shall consist of an amount in Cash equal to the aggregate principal amount at maturity of the U.S. Treasury securities described above, in which case references herein to “U.S. Treasury securities (or principal and interest strips thereof)” in connection with the Treasury Portfolio shall, thereafter, be deemed to be references to such amount of Cash.

“**Treasury Portfolio Purchase Price**” means the lowest aggregate ask-side price quoted by a primary U.S. government securities dealer to the Quotation Agent between 9:00 a.m. and 4:00 p.m., New York City time, on the Optional Remarketing Date for the purchase of the Treasury Portfolio for settlement on the Optional Remarketing Settlement Date; *provided* that if the Treasury Portfolio consists of Cash, “**Treasury Portfolio Purchase Price**” means the amount thereof.

“**Treasury Security**” means a zero-coupon U.S. Treasury security with a principal amount of \$1,000 that matures on or prior to the Purchase Contract Settlement Date (e.g., CUSIP No. 9128206B8).

“**Treasury Unit**” means, following the substitution of a Treasury Security for Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock as Collateral to secure a Holder’s obligations under the Purchase Contract, the collective rights and obligations of a Holder of a Treasury Units Certificate in respect of a 1/10 undivided beneficial ownership interest in a Treasury Security, subject to the Pledge thereof, and the related Purchase Contract.

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“**Treasury Units Certificate**” means a certificate evidencing the rights and obligations of a Holder in respect of the number of Treasury Units specified on such certificate.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York from time to time.

“**Underwriters**” means the underwriters identified in Schedule I to the Underwriting Agreement.

“**Underwriting Agreement**” means the Underwriting Agreement, dated April 13, 2021, among the Company and Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC as representatives of the Underwriters, relating to the sale of Corporate Units.

“**Unit**” means a Corporate Unit, a Cash Settled Unit or a Treasury Unit, as the case may be.

“**Unsuccessful Final Remarketing**” has the meaning set forth in Section 5.02(b)(viii).

“**Unsuccessful Optional Remarketing**” has the meaning set forth in Section 5.02(a)(v).

“**Unsuccessful Remarketing**” means, as applicable, an Unsuccessful Optional Remarketing or an Unsuccessful Final Remarketing.

“**U.S. Bank**” has the meaning set forth in Section 7.15.

“**Valuation Period**” has the meaning set forth in Section 5.11(c)(2).

“**Value**” means, with respect to any item of Collateral on any date, as to (1) Cash, the amount thereof, (2) Treasury Securities, the aggregate principal amount thereof at maturity, (3) Applicable Ownership Interests in the Treasury Portfolio, the appropriate aggregate percentage of the aggregate principal amount at maturity of the Treasury Portfolio and (4) Applicable Ownership Interests in Mandatory Convertible Preferred Stock, \$1,000 *multiplied* by the aggregate number of the underlying shares of Mandatory Convertible Preferred Stock.

Section 1.02. Compliance Certificates and Opinions. Except as otherwise expressly provided by this Agreement, upon any application or request by the Company to the Purchase Contract Agent, the Custodial Agent or the Collateral Agent to take any action in accordance with any provision of this Agreement, the Company shall furnish to the Purchase Contract Agent, the Custodial Agent or the Collateral Agent an Officer’s Certificate stating that all conditions precedent, if any, provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

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Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Agreement shall include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. Form of Documents Delivered to Purchase Contract Agent or Collateral Agent. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which its certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

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

Section 1.04. Acts of Holders; Record Dates. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Purchase Contract Agent and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and (subject to Section 7.01) conclusive in favor of the Purchase Contract Agent and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Purchase Contract Agent deems sufficient.

(c) The ownership of Units shall be proved by the Security Register.

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

(e) The Company may set any date as a record date for the purpose of determining the Holders of Outstanding Units entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Agreement to be given, made or taken by Holders. If any record date is set pursuant to this paragraph, the Holders of the Outstanding Corporate Units, the Outstanding Treasury Units and the Outstanding Cash Settled Units, as the case may be, on such record date, and no other Holders, shall be entitled to take the relevant action with respect to the Corporate Units, the Treasury Units or the Cash Settled Units, as the case may be, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless taken prior to or on the applicable Expiration Date by Holders of the requisite number of Outstanding Units on such record date. Nothing contained in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and be of no effect), and nothing contained in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite number of Outstanding Units on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Purchase Contract Agent in writing and to each Holder in the manner set forth in Section 1.06.

With respect to any record date set pursuant to this Section 1.04(e), the Company may designate any date as the “**Expiration Date**” and from time to time may change the Expiration Date to any later day; *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the Purchase Contract Agent in writing, and to each Holder in the manner set forth in Section 1.06, prior to or on the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.04, the Company shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.



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Section 1.05. Notices. All notices, requests, consents, directions, instructions and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the “Address for Notices” specified below its name on the signature pages hereof or, as to any party, at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier, facsimile, electronically (and in the case of the Purchase Contract Agent, upon the Purchase Contract Agent’s confirmation of receipt in writing or by telephone) or personally delivered or, in the case of a mailed notice, mailed by first class mail (registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery, and with respect to the Purchase Contract Agent, upon receipt, in each case given or addressed as aforesaid.

Each of the Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary (solely for purposes of this paragraph, the “**Agents**”) shall have the right, but shall not be required, to conclusively rely upon and comply with notices, instructions, directions or other communications sent by e-mail (in PDF format), facsimile and other similar unsecured electronic methods by persons reasonably believed by such entity to be authorized to give instructions and directions on behalf of the Company; *provided, however*, that (a) the party providing such written instructions or directions, subsequent to such transmission, shall provide the originally executed instructions or directions to the Agent in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized officer (in the case of an instruction or direction from the Company) or an authorized representative of the party providing such instructions or directions (in all other cases). If the party elects to give the Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Agent in its discretion elects to act upon such instructions or directions, the Agent’s understanding of such instructions or directions, vis a vis such party, shall be deemed controlling. The Agent shall not be liable, vis a vis such party, for any losses, costs or expenses arising directly or indirectly from the Agent’s reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or the subsequent written instruction or direction is never received. Each of the Agents shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of the Company; and each such Agent shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such notices, instructions, directions or other communications. The Company agrees to assume all risks arising out of the use of such electronic methods to submit notices, instructions, directions or other communications to the Agents, including without limitation the risk of any such entity acting on unauthorized instructions, and the risk of interception and misuse by third parties. The Company shall use all reasonable efforts to ensure that any such notices, instructions, directions or other communications transmitted to the Agents pursuant to this Agreement are complete and correct. Any such notices, instructions, directions or other communications shall be conclusively deemed to be valid instructions from the Company to the Agents, as the case may be, for the purposes of this Agreement.

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The Purchase Contract Agent shall send to the Company in accordance with this Section, and to the Transfer Agent at the following address, a copy of any notices in the form of Exhibits D, E, F, G, I or K it sends or receives:

Computershare Trust Company, N.A.  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

Whenever a notice or other communication to the Holders is required to be given under this Agreement, the Company or the Company's agent shall give such notices and communications to the Holders and, with respect to any Units registered in the name of the Depository or the nominee of the Depository, the Company or the Company's agent shall, except as set forth herein, have no obligations to the Beneficial Owners.

Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, shall be deemed original signatures for purposes of this Agreement and all other related documents and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Agreement or any other related document or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Agreement or the other related documents or related hereto or thereto (including, without limitation, addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) ("**Executed Documentation**") may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary acts on any Executed Documentation sent by electronic transmission, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (a) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise) or (b) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it being understood and agreed that the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising out of such electronic methods, including, without limitation, the risk of the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary acting on unauthorized instructions and the risk of interception and misuse by third parties.

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Section 1.06. Notice to Holders; Waiver. Where this Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder, at its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Purchase Contract Agent, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Purchase Contract Agent shall constitute a sufficient notification for every purpose hereunder.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, whenever notice is required to be given with respect to a Unit represented by a Global Certificate, such notice shall be sufficiently given if given to the Depository for such Global Certificate (or its designee) pursuant to customary procedures of such Depository.

Section 1.07. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.08. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, and the Holders from time to time of the Units, by their acceptance of the same, shall be deemed to have agreed to be bound by the provisions hereof and to have ratified the agreements of, and the grant of the Pledge hereunder by, the Purchase Contract Agent.

Section 1.09. Separability Clause. In case any provision in this Agreement or in the Units shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof and thereof shall not in any way be affected or impaired thereby.

Section 1.10. Benefits of Agreement. Nothing contained in this Agreement or in the Units, express or implied, shall give to any Person, other than (x) the parties hereto and their successors hereunder, (y) to the extent provided hereby, the Holders, and (z) to the extent set forth in Section 3.06, the Beneficial Owners, any benefits or any legal or equitable right, remedy or claim under this Agreement. The Holders from time to time shall be beneficiaries of this Agreement and shall be bound by all of the terms and conditions hereof and of the Units evidenced by their Certificates by their acceptance of delivery of such Certificates.

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Section 1.11. Governing Law; Jurisdiction; Waiver of Trial by Jury. THIS AGREEMENT AND THE UNITS AND THE PURCHASE CONTRACTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF TO THE EXTENT THAT A DIFFERENT LAW WOULD GOVERN AS A RESULT.

Each of the parties hereto irrevocably consents and agrees, for the benefit of the Holders from time to time of the Units and the Purchase Contracts, and the other parties hereto, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Agreement, the Units or the Purchase Contracts may be brought in the courts of the State of New York or the courts of the United States, in each case located in the Borough of Manhattan, New York City, New York and hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court in personam, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Agreement, the Units or the Purchase Contracts brought in the courts of the State of New York or the courts of the United States, in each case, located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**EACH PARTY HERETO, AND EACH HOLDER OF A UNIT BY ACCEPTANCE THEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, THE UNITS, THE PURCHASE CONTRACTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

Section 1.12. Legal Holidays. In any case where any Contract Adjustment Payment Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), and other distributions shall not be paid on such date, but Contract Adjustment Payments, deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) and such other distributions shall be paid on the next succeeding Business Day, with the same force and effect as if made on such scheduled Contract Adjustment Payment Date; *provided* that no interest or other amount shall accrue or be payable by the Company or to any Holder in respect of any such delay.

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In any case where the Purchase Contract Settlement Date or any Early Settlement Date or Fundamental Change Early Settlement Date shall not be a Business Day (notwithstanding any other provision of this Agreement or the Units), Purchase Contracts shall not be performed and Early Settlement or Fundamental Change Early Settlement shall not be effected on such date, but Purchase Contracts shall be performed or Early Settlement or Fundamental Change Early Settlement shall be effected, as applicable, on the next succeeding Business Day with the same force and effect as if made on such Purchase Contract Settlement Date, Early Settlement Date or Fundamental Change Early Settlement Date, as applicable.

Section 1.13. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

The exchange of copies of this Agreement and of signature pages by facsimile, electronically or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by facsimile, electronically or PDF shall be deemed to be their original signatures for all purposes. For the avoidance of doubt, all notices, approvals, consents, requests and any communications hereunder or with respect to this Agreement or in connection with any other Transaction Document must be in writing (*provided* that any communication sent to U.S. Bank National Association as Purchase Contract Agent, Collateral Agent, Custodial Agent, and Securities Intermediary hereunder must be in the form of a document that is signed by hand, by facsimile, or by way of a digital signature provided by DocuSign or Adobe (or such other digital signature provider as specified in writing to the Purchase Contract Agent by the authorized representative), in English). The Company agrees to assume all risks arising out of the use of digital signatures and electronic methods to submit communications to U.S. Bank National Association as Purchase Contract Agent, Collateral Agent, Custodial Agent, and Securities Intermediary hereunder or under any other Transaction Document, including, without limitation, the risk of it acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1.14. Inspection of Agreement. Upon reasonable prior written notice and subject to the terms hereof, a copy of this Agreement shall be available at all reasonable times during normal business hours at the Corporate Trust Office for inspection by any Holder or Beneficial Owner.

Section 1.15. Appointment of Financial Institution as Agent for the Company. The Company may appoint a financial institution (which may be the Collateral Agent, *provided* that it shall have accepted such appointment) to act as its agent in performing its obligations and in accepting and enforcing performance of the obligations of the Purchase Contract Agent and the Holders, under this Agreement and the Purchase Contracts, by giving notice of such appointment in the manner provided in Section 1.05 hereof. Any such appointment shall not relieve the Company in any way from its obligations hereunder.

Section 1.16. No Waiver. No failure on the part of the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

## ARTICLE 2

### CERTIFICATE FORMS

Section 2.01. Forms of Certificates Generally. The Certificates (including the form of Purchase Contract forming part of each Unit evidenced thereby) shall be in substantially the form set forth in Exhibit A hereto (in the case of Corporate Units Certificates), Exhibit B hereto (in the case of Treasury Units Certificates) or Exhibit C hereto (in the case of Cash Settled Units Certificates), with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Units are listed or any depository therefor, or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

The definitive Certificates shall be produced in any manner as determined by the officers of the Company executing the Units evidenced by such Certificates, consistent with the provisions of this Agreement, as evidenced by their execution thereof.

Every Global Certificate authenticated, executed on behalf of the Holders and delivered hereunder shall bear a legend substantially in the form set forth in Exhibit A, Exhibit B and Exhibit C for a Global Certificate.

Section 2.02. Form of Purchase Contract Agent's Certificate of Authentication. The form of the Purchase Contract Agent's certificate of authentication of the Units shall be in substantially the form set forth on the form of the applicable Certificates.

## ARTICLE 3

### THE UNITS

Section 3.01. Amount, Form and Denominations. The aggregate number of Units evidenced by Certificates authenticated, executed on behalf of the Holders and delivered hereunder is limited to 8,625,000, except for Certificates authenticated, executed and delivered upon registration of transfer of, in exchange for, or in lieu of, other Certificates pursuant to Section 3.04, Section 3.05, Section 3.06, Section 3.09, Section 3.12(a), Section 3.13(a), Section 3.14(a), Section 3.15(a) or Section 8.05.

The Certificates shall be issuable only in registered form (which, for the avoidance of doubt, in the case of Global Certificates, shall be registered in the name of the Depository or its nominee) and only in denominations of a single Corporate Unit, Treasury Unit or Cash Settled Unit and any integral multiple thereof.

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Section 3.02. Rights and Obligations Evidenced by the Certificates. Each Corporate Units Certificate shall evidence the number of Corporate Units specified therein, with each such Corporate Unit representing (1) the ownership by the Holder thereof of the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, in respect of such Holder's Corporate Unit and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract. The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Corporate Unit, to pledge, pursuant to Article 11 hereof, the Applicable Ownership Interest in Mandatory Convertible Preferred Stock, or the Applicable Ownership Interest in the Treasury Portfolio, forming a part of such Corporate Unit to the Collateral Agent, for the benefit of the Company, and to grant to the Collateral Agent, as agent of and for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Applicable Ownership Interest in Mandatory Convertible Preferred Stock or such Applicable Ownership Interest in the Treasury Portfolio to secure the obligation of the Holder under each Purchase Contract to purchase shares of Common Stock. To effect such Pledge and grant such security interest, the Transfer Agent, has, on the date hereof, delivered to the Purchase Contract Agent, on behalf of the Holders of Corporate Units, the Applicable Ownership Interests in Mandatory Convertible Preferred Stock.

Upon the formation of a Treasury Unit pursuant to Section 3.12(a), each Treasury Units Certificate shall evidence the number of Treasury Units specified therein, with each such Treasury Unit representing (1) the ownership by the Holder thereof of a 1/10 undivided beneficial ownership interest in one Treasury Security, subject to the Pledge of such interest by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract. The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Treasury Unit, to pledge, pursuant to Article 11 hereof, such Holder's interest in the Treasury Security forming a part of such Treasury Unit to the Collateral Agent, as agent of and for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Treasury Security to secure the obligation of the Holder under each Purchase Contract to purchase shares of Common Stock.

Upon the formation of a Cash Settled Unit pursuant to Section 3.13(a), each Cash Settled Units Certificate shall evidence the number of Cash Settled Units specified therein, with each such Cash Settled Unit representing (1) the ownership by the Holder thereof of \$100 Cash, subject to the Pledge of such Cash by such Holder pursuant to this Agreement, and (2) the rights and obligations of the Holder thereof and the Company under one Purchase Contract. The Purchase Contract Agent is hereby authorized, as attorney-in-fact for, and on behalf of, the Holder of each Cash Settled Unit, to pledge, pursuant to Article 11 hereof, such Holder's Cash forming a part of such Cash Settled Unit to the Collateral Agent, as agent of and for the benefit of the Company, and to grant to the Collateral Agent, for the benefit of the Company, a security interest in the right, title and interest of such Holder in such Cash to secure the obligation of the Holder under each Purchase Contract to purchase shares of Common Stock.

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The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder of a Unit to any of the rights of a holder of shares of Common Stock, including, without limitation, the right to vote or receive any dividends or other payments or distributions or to consent or to receive notice as a shareholder in respect of the meetings of shareholders or for the election of directors of the Company or for any other matter, or any other rights whatsoever as a shareholder of the Company.

Section 3.03. Execution, Authentication, Delivery and Dating. Subject to the provisions of Section 3.12(a), Section 3.13(a), Section 3.14(a) and Section 3.15(a) hereof, upon the execution and delivery of this Agreement, and at any time and from time to time thereafter, the Company may deliver Certificates executed by the Company to the Purchase Contract Agent for authentication, execution on behalf of the Holders and delivery, together with its Issuer Order for authentication, execution on behalf of the Holders as their attorney-in-fact and delivery, together with its Issuer Order for authentication, of such Certificates, and the Purchase Contract Agent in accordance with such Issuer Order shall authenticate, execute on behalf of the Holders as their attorney-in-fact and deliver such Certificates.

The Certificates shall be executed on behalf of the Company by its Chief Executive Officer, its President, its Chief Financial Officer, any one of its Vice Presidents, or its Treasurer or one of its Assistant Treasurers. The signature of any of these officers on the Certificates may be manual, electronic or facsimile.

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

No Purchase Contract evidenced by a Certificate shall be valid until such Certificate has been executed on behalf of the Holder by the manual or electronic signature of an authorized signatory of the Purchase Contract Agent, as such Holder's attorney-in-fact. Such signature by an authorized signatory of the Purchase Contract Agent shall be conclusive evidence that the Holder of such Certificate has entered into the Purchase Contracts evidenced by such Certificate.

Each Certificate shall be dated the date of its authentication.

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

Section 3.04. Temporary Certificates. Pending the preparation of definitive Certificates, the Company may execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the Holders as their attorney-in-fact, and deliver, in lieu of such definitive Certificates, temporary Certificates which are in substantially the form set forth in Exhibit A, Exhibit B or Exhibit C



hereto, as the case may be, with such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as may be required by the rules of any securities exchange on which the Corporate Units, Treasury Units or Cash Settled Units, as the case may be, are listed (if any), or as may, consistently herewith, be determined by the officers of the Company executing such Certificates, as evidenced by their execution of the Certificates.

If temporary Certificates are issued, the Company will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the Corporate Trust Office, at the expense of the Company and without charge to the Holder. Upon surrender for cancellation of any one or more temporary Certificates, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the Holder as their attorney-in-fact, and deliver in exchange therefor, one or more definitive Certificates of like tenor and denominations and evidencing a like number of Units as the temporary Certificate or Certificates so surrendered. Until so exchanged, the temporary Certificates shall in all respects evidence the same benefits and the same obligations with respect to the Units evidenced thereby as definitive Certificates.

Section 3.05. Registration: Registration of Transfer and Exchange. The Purchase Contract Agent shall keep at the Corporate Trust Office a register (the “**Security Register**”) in which, subject to such reasonable regulations as are then customary and standard, the Purchase Contract Agent shall provide for the registration of Certificates and of transfers of Certificates (the Purchase Contract Agent, in such capacity, the “**Security Registrar**”). The Security Registrar shall record separately the registration and transfer of the Certificates evidencing Corporate Units, Treasury Units and Cash Settled Units.

Upon surrender for registration of transfer of any Certificate at the Corporate Trust Office, the Company shall execute and deliver to the Purchase Contract Agent in its capacity as transfer agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the designated transferee or transferees, and deliver, in the name of the designated transferee or transferees, one or more new Certificates of any authorized denominations, like tenor, and evidencing a like number of Corporate Units, Treasury Units or Cash Settled Units, as the case may be.

At the option of the Holder and upon written notice to the Company and the Purchase Contract Agent, Certificates may be exchanged for other Certificates, of any authorized denominations and evidencing a like number of Corporate Units, Treasury Units or Cash Settled Units, as the case may be, upon surrender of the Certificates to be exchanged at the Corporate Trust Office. Whenever any Certificates are so surrendered for exchange, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the Holder as their attorney-in-fact, and deliver to the Holders the Certificates which the Holder making the exchange is entitled to receive.

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All Certificates issued upon any registration of transfer or exchange of a Certificate shall evidence the ownership of the same number of Corporate Units, Treasury Units or Cash Settled Units, as the case may be, and be entitled to the same benefits and subject to the same obligations under this Agreement as the Corporate Units, Treasury Units or Cash Settled Units, as the case may be, evidenced by the Certificate surrendered upon such registration of transfer or exchange.

Every Certificate presented or surrendered for registration of transfer or exchange shall (if so required by the Purchase Contract Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Contract Agent duly executed by the Holder thereof or its attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of a Certificate, but the Company and the Purchase Contract Agent may require payment from the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Certificates and any other fees and expenses incurred by the Company or the Purchase Contract Agent (including, without limitation, the fees of expenses of their respective counsel), other than any exchanges pursuant to Section 3.04, Section 3.06 and Section 8.05 not involving any transfer.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder as their attorney-in-fact and deliver any Certificate in exchange for any other Certificate presented or surrendered for registration of transfer or for exchange on or after the Business Day immediately preceding the earliest to occur of any Early Settlement Date with respect to such Certificate, any Fundamental Change Early Settlement Date with respect to such Certificate, the Purchase Contract Settlement Date or the Termination Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

(a) if the Purchase Contract Settlement Date, an Early Settlement Date or a Fundamental Change Early Settlement Date with respect to such other Certificate (or portion thereof) has occurred, deliver the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such other Certificate (or portion thereof) on the applicable settlement date; and

(b) if a Termination Event, Early Settlement, or Fundamental Change Early Settlement shall have occurred prior to the Purchase Contract Settlement Date, Transfer the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Cash, the Treasury Security or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying each Unit evidenced by such Certificate, in each case subject to the applicable conditions and in accordance with the applicable provisions of Section 3.16(a) and Article 5 hereof.

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The Purchase Contract Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to any transfer of any interest in any Certificate (including any transfers between or among Beneficial Owners of interests in any Global Certificate) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 3.06. Book-entry Interests. The Certificates will be issued in the form of one or more fully registered Global Certificates, to be delivered to the Depository or its custodian by, or on behalf of, the Company. The Company hereby designates DTC as the initial Depository. Such Global Certificates shall initially be registered on the Security Register in the name of Cede & Co., the nominee of the Depository, and no Beneficial Owner will receive a definitive Certificate representing such Beneficial Owner's interest in such Global Certificate, except as provided in Section 3.08. The Purchase Contract Agent shall enter into an agreement with the Depository in form and substance satisfactory to the Purchase Contract Agent if so requested by the Company. Following the issuance of such Global Certificates and unless and until definitive, and fully registered Certificates have been issued to Beneficial Owners pursuant to Section 3.08:

(a) the provisions of this Section 3.06 shall be in full force and effect;

(b) the Company and the Purchase Contract Agent shall be entitled to deal with the Depository for all purposes of this Agreement (including, without limitation, making Contract Adjustment Payments, providing notices and receiving approvals, votes or consents hereunder) as the Holder of the Units and the sole holder of the Global Certificates and shall have no obligation to the Beneficial Owners; *provided* that a Beneficial Owner may directly enforce against the Company, without any consent, proxy, waiver or involvement of the Depository of any kind, such Beneficial Owner's right to receive a definitive Certificate representing the Units beneficially owned by such Beneficial Owner, as set forth in Section 3.08;

(c) to the extent that the provisions of this Section 3.06 conflict with any other provisions of this Agreement, the provisions of this Section 3.06 shall control; and

(d) except as set forth in the *proviso* of clause (b) of this Section 3.06, the rights of the Beneficial Owners shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Owners and the Depository or the Depository Participants. The Depository will make book-entry transfers among Depository Participants and receive and transmit payments of Contract Adjustment Payments to such Depository Participants.

Transfers of securities evidenced by Global Certificates shall be made through the facilities of the Depository, and any cancellation of, or increase or decrease in the number of, such securities (including the creation of Treasury Units, the creation of Cash Settled Units and the recreation of Corporate Units pursuant to Section 3.12(a), Section 3.13(a) and Section 3.14(a) or Section 3.15(a), respectively) shall be accomplished by the Purchase Contract Agent in its capacity as paying agent making appropriate annotations on the Schedule of Increases and Decreases set forth in such Global Certificate.

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Section 3.07. Appointment of Successor Depository. If the Depository elects to discontinue its services as securities depository with respect to the Units, the Company may, in its sole discretion, appoint a successor Depository with respect to the Units.

Section 3.08. Definitive Certificates.

If:

- (a) the Depository notifies the Company that it is unwilling or unable to continue its services as securities depository with respect to the Units and no successor Depository has been appointed pursuant to Section 3.07 within 90 days after such notice;
- (b) the Depository ceases to be a “clearing agency” registered under Section 17A of the Exchange Act when the Depository is required to be so registered to act as the Depository and so notifies the Company, and no successor Depository has been appointed pursuant to Section 3.07 within 90 days after such notice;
- (c) to the extent permitted by the Depository, the Company determines in its discretion that the Global Certificates shall be exchangeable for definitive Certificates and Beneficial Owners elect to withdraw their interests in the Global Certificates; or
- (d) a Beneficial Owner seeking to exercise or enforce its rights under the Corporate Units, Treasury Units or Cash Settled Units requests to exchange such Beneficial Owner’s interest in the Global Certificates for definitive Certificates;

then (x) definitive Certificates shall be prepared by the Company with respect to such Units and delivered to the Purchase Contract Agent, together with an Issuer Order for authentication, and (y) upon surrender of the Global Certificates representing the Units by the Depository, accompanied by registration instructions, the Company shall cause definitive Certificates to be delivered to Beneficial Owners in accordance with instructions provided by the Depository. The Company and the Purchase Contract Agent shall not be liable for any delay in delivery of such instructions and may conclusively rely on and shall be authorized and protected in relying on, such instructions. Each definitive Certificate so delivered shall evidence Units of the same kind and tenor as the Global Certificate (or beneficial interests in a Global Certificate) so surrendered in respect thereof.

Section 3.09. Mutilated, Destroyed, Lost and Stolen Certificates. If any mutilated Certificate is surrendered to the Purchase Contract Agent, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the Holder as their attorney-in-fact, and deliver to the Holder in exchange therefor, a new Certificate, evidencing the same number of Corporate Units, Treasury Units or Cash Settled Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

If there shall be (i) delivered to the Company and the Purchase Contract Agent evidence to their satisfaction of the destruction, loss or theft of any Certificate, and (ii) furnished to the Company and the Purchase Contract Agent such security and/or indemnity satisfactory to the Purchase Contract Agent and the Company to hold each of them and any agent of any of them harmless

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against any and all related loss, liability, cost, claim and expense, then, in the absence of notice to the Company or the Purchase Contract Agent that such Certificate has been acquired by a protected purchaser, the Company shall execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall, upon receipt of an Issuer Order, authenticate, execute on behalf of the Holder as their attorney-in-fact, and deliver to the Holder, in lieu of any such destroyed, lost or stolen Certificate, a new Certificate, evidencing the same number of Corporate Units, Treasury Units or Cash Settled Units, as the case may be, and bearing a Certificate number not contemporaneously outstanding.

Notwithstanding the foregoing, the Company shall not be obligated to execute and deliver to the Purchase Contract Agent, and the Purchase Contract Agent shall not be obligated to authenticate, execute on behalf of the Holder as its attorney-in-fact, and deliver to the Holder, with respect to such mutilated, destroyed, lost or stolen Certificate, a new Certificate on or after the Business Day immediately preceding the earliest of any Early Settlement Date with respect to such lost, stolen, destroyed or mutilated Certificate, any Fundamental Change Early Settlement Date with respect to such lost, stolen, destroyed or mutilated Certificate, the Purchase Contract Settlement Date or the Termination Date. In lieu of delivery of a new Certificate, upon satisfaction of the applicable conditions specified above in this Section and receipt of appropriate registration or transfer instructions from such Holder, the Purchase Contract Agent shall:

(a) if the Purchase Contract Settlement Date, an Early Settlement Date or a Fundamental Change Early Settlement Date with respect to such lost, stolen, destroyed or mutilated Certificate has occurred, deliver (or cause to be delivered) the shares of Common Stock issuable in respect of the Purchase Contracts forming a part of the Units evidenced by such Certificate; and

(b) if a Termination Event, Fundamental Change Early Settlement or an Early Settlement with respect to such lost, stolen, destroyed or mutilated Certificate shall have occurred prior to the Purchase Contract Settlement Date, transfer the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Treasury Security, the Applicable Ownership Interests in the Treasury Portfolio or the Cash, as the case may be, underlying each Unit evidenced by such Certificate, in each case subject to the applicable conditions and in accordance with the applicable provisions of Section 3.16(a) and Article 5 hereof.

Upon the issuance of any new Certificate under this Section 3.09, the Company and the Purchase Contract Agent may require the payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other fees and expenses incurred by the Company or the Purchase Contract Agent (including, without limitation, the fees and expenses of their respective counsel) in connection therewith.

Every new Certificate issued pursuant to this Section 3.09 in lieu of any destroyed, lost or stolen Certificate shall constitute an original additional contractual obligation of the Company and of the Holder in respect of the Units evidenced thereby, whether or not the destroyed, lost or stolen Certificate (and the Units evidenced thereby) shall be at any time enforceable by anyone, and shall be entitled to all the benefits and be subject to all the obligations of this Agreement equally and proportionately with any and all other Certificates delivered hereunder.

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The provisions of this Section 3.09 are exclusive and shall preclude, to the extent lawful, all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates.

Section 3.10. Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Company, the Collateral Agent, and the Purchase Contract Agent and any agent of the Company, the Collateral Agent or the Purchase Contract Agent, may treat the Person in whose name such Certificate is registered as the absolute owner of the Units evidenced thereby for purposes of any payment or distribution with respect to the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, on the Treasury Security, on the Applicable Ownership Interests in the Treasury Portfolio or payment of Contract Adjustment Payments (in each case, subject to any Record Date or other applicable record date) and for purposes of performance of the Purchase Contracts and for all other purposes whatsoever in connection with such Units (subject to the *proviso* in Section 3.06(b)), whether or not such payment, distribution, or performance shall be overdue and notwithstanding any notice to the contrary, and neither the Company nor the Purchase Contract Agent, nor any agent of the Company or the Purchase Contract Agent, shall be affected by, or incur any liability as a result of, notice to the contrary.

Neither the Purchase Contract Agent nor the Security Registrar shall have any responsibility or obligation to any Beneficial Owner of Units represented by a Global Certificate or other Person with respect to the accuracy of the records of the Depository or its nominee or of any agent member, with respect to any ownership interest in the Units or with respect to the delivery to any agent member, Beneficial Owner or other Person (other than the Depository) of any notice or the payment of any amount, under or with respect to such Units. All notices and communications to be given to the Holders and all payments to be made to Holders pursuant to the Units and this Agreement shall be given or made only to or upon the order of the registered holders (which shall be the Depository or its nominee in the case of a Global Certificate). The rights of Beneficial Owners of the Units underlying a Global Certificate shall be exercised only through the Depository subject to its applicable procedures. The Purchase Contract Agent and the Security Registrar shall be entitled to conclusively rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any Beneficial Owners. The Purchase Contract Agent and the Security Registrar shall be entitled to deal with the Depository, and any nominee thereof, that is the registered holder of any Global Certificate for all purposes of this Agreement relating to such Global Certificate (including the payment of Contract Adjustment Payments and the giving of instructions or directions by or to the Beneficial Owner in any Units underlying such Global Certificate) as the sole Holder of such Global Certificate and shall have no obligations to the Beneficial Owners thereof (subject to the *proviso* in Section 3.06(b)). Neither the Purchase Contract Agent nor the Security Registrar shall have any responsibility or incur any liability for any acts or omissions of the Depository with respect to any Units underlying such Global Certificate, for the records of the Depository, including records in respect of beneficial ownership interests in respect of Units underlying such Global Certificate, for any transactions between the Depository and any agent member or between or among the Depository, any such agent member and/or any Holder or Beneficial Owner of any Units underlying such Global Certificate, or for any transfers of beneficial interests in any Units underlying such Global Certificate.

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Notwithstanding the foregoing, with respect to any Global Certificate, nothing contained herein shall prevent the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent, from giving effect to any written certification, proxy or other authorization furnished by the Depository (or its nominee), as a Holder, with respect to such Global Certificate, or impair, as between such Depository and the related Beneficial Owner, the operation of customary practices governing the exercise of rights of the Depository (or its nominee) as Holder of such Global Certificate. None of the Company, the Purchase Contract Agent or any agent of the Company or the Purchase Contract Agent will have any responsibility or incur any liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Certificate or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.11. Cancellation. All Certificates surrendered for delivery of shares of Common Stock on or after the Purchase Contract Settlement Date or in connection with an Early Settlement or a Fundamental Change Early Settlement or for delivery of the Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio or the Cash proceeds of the Treasury Security, as the case may be, after the occurrence of a Termination Event, an Early Settlement or a Fundamental Change Early Settlement, a Collateral Substitution, or upon the registration of transfer or exchange of a Unit, shall, if surrendered to any Person other than the Purchase Contract Agent, be delivered to the Purchase Contract Agent along with appropriate written instructions regarding the cancellation thereof and, if not already cancelled, shall be promptly cancelled by it. The Company may at any time deliver to the Purchase Contract Agent for cancellation any Certificates previously authenticated, executed and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Certificates so delivered shall, upon an Issuer Order, be promptly cancelled by the Purchase Contract Agent. No Certificates shall be authenticated, executed on behalf of the Holder and delivered in lieu of or in exchange for any Certificates cancelled as provided in this Section 3.11, except as expressly permitted by this Agreement. All cancelled Certificates held by the Purchase Contract Agent shall be disposed of in accordance with its then customary practices. With respect to any Certificates that it has acquired, the Purchase Contract Agent may be entitled to conclusively rely on such Issuer Order as it relates to the ownership by the Company of such Certificate.

If the Company or any Affiliate of the Company shall acquire any Certificate, such acquisition shall not operate as a cancellation of such Certificate unless and until such Certificate is delivered to the Purchase Contract Agent for cancellation.

Section 3.12. Creation of Treasury Units by Substitution of Treasury Security. (a) Subject to the conditions set forth in this Agreement, and subject to the limitations on a Collateral Substitution in connection with an Optional Remarketing as set forth under Section 5.02(a)(i) below, a Holder of Corporate Units may, at any time from and after the date of this Agreement, other than during a Blackout Period, effect a Collateral Substitution and separate the shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock in respect of such Corporate Units by substituting for such Holder's Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock for which Collateral Substitution is being made, Treasury Securities;

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*provided* that Holders may make Collateral Substitutions only in integral multiples of 10 Corporate Units. To effect such substitution, the Holder must:

(i) Transfer to the Collateral Agent, for credit to the Collateral Account, one Treasury Security and/or security entitlements with respect thereto for every 10 Corporate Units with respect to which such substitution is being made (such amount shall, following receipt by the Company from the Purchase Contract Agent of a copy of the instruction from the Holder to the Purchase Contract Agent in the form of Exhibit D, be calculated by the Company and provided to the Purchase Contract Agent in writing at such time it receives a copy of such notice from the Purchase Contract Agent); and

(ii) Transfer the related Corporate Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit D hereto, whereupon the Purchase Contract Agent shall (in accordance with instructions provided for in the aforementioned notice from Holders and upon completion of the requirements of Section 3.12(a)(i) above) promptly provide an instruction to such effect to the Collateral Agent, substantially in the form of Exhibit G hereto.

Upon confirmation that the Treasury Securities described in clause (i) above or security entitlements with respect thereto have been credited to the Collateral Account and receipt of the written instruction to the Collateral Agent described in clause (ii) above, the Collateral Agent shall release such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit H hereto, to Transfer the shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby. Notwithstanding anything to the contrary herein, the Securities Intermediary and the Collateral Agent shall take no action to release such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock from the Pledge unless and until the direction is provided by the Purchase Contract Agent substantially in the form of Exhibit G hereto.

Upon credit to the Collateral Account of the Treasury Securities and/or security entitlements with respect thereto delivered by a Holder of Corporate Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the shares of Mandatory Convertible Preferred Stock underlying the appropriate Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

Upon receipt of the shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Purchase Contract Agent shall promptly:

(A) cancel the related Corporate Units;



(B) Transfer such shares of Mandatory Convertible Preferred Stock to the Holder (such shares of Mandatory Convertible Preferred Stock shall constitute Separate Shares of Mandatory Convertible Preferred Stock and be tradable as separate securities, independent of the concurrently created Treasury Units) in book-entry form, to the extent a Global Preferred Share is registered in the name of the Depository or its nominee; and

(C) cause the Collateral Agent to deliver Treasury Units in book-entry form, or if applicable, cause the Collateral Agent to deliver the Treasury Units to the Purchase Contract Agent, upon receipt of which the Purchase Contract Agent shall authenticate, execute on behalf of such Holder as their attorney-in-fact and deliver Treasury Units in the form of a Treasury Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Corporate Units.

Holders who elect to separate the shares of Mandatory Convertible Preferred Stock by substituting Treasury Securities for Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, the reasonable fees and expenses payable to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary and their respective counsel), in respect of such Collateral Substitution, and neither the Company nor the Purchase Contract Agent nor the Collateral Agent nor the Securities Intermediary shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) In the event a Holder making a Collateral Substitution pursuant to Section 3.12(a) fails to effect a book-entry transfer of the Corporate Units or fails to deliver Corporate Units Certificates to the Purchase Contract Agent after depositing Treasury Securities and/or security entitlements with respect thereto with the Collateral Agent, any distributions on the shares of Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock constituting a part of such Corporate Units, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until such Corporate Units are so transferred or the Corporate Units Certificate is so delivered, as the case may be, or such Holder provides evidence satisfactory to the Company and the Purchase Contract Agent that such Corporate Units Certificate has been destroyed, lost or stolen, together with any indemnity and/or security that may be required by the Purchase Contract Agent and the Company.

(c) Except as described in Section 5.02, Section 3.12(a), Section 3.13(a) or in connection with an Early Settlement, a Fundamental Change, Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Corporate Unit remains in effect, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder in respect of the Mandatory Convertible Preferred Stock and the Purchase Contract comprising such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit and in the manner provided for in Exhibit D attached hereto.

Section 3.13. Creation of Cash Settled Units by Substitution of Cash. (a) Subject to the conditions set forth in this Agreement, a Holder of Corporate Units may, at any time from and after the date the Company gives a Notice of a Final Remarketing as set forth in Section 5.02(b)(ii) below and prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Final Remarketing Period, and other than during a Blackout Period, effect a Collateral Substitution and separate the shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock in respect of such Holder's Corporate Units by substituting for such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock for which Collateral Substitution is being made, Cash in an aggregate amount equal to the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock *multiplied by* \$1,000; *provided* that Holders may make Collateral Substitutions only in integral multiples of 10 Corporate Units. To effect such substitution, the Holder must:

(i) Transfer to the Collateral Agent, for credit to the Collateral Account, Cash in an amount equal to the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock for which such Collateral Substitution is made *multiplied by* \$1,000 (such amount shall, following receipt by the Company from the Purchase Contract Agent of a copy of the instruction from the Holder to the Purchase Contract Agent in the form of Exhibit E, be calculated by the Company and provided to the Purchase Contract Agent in writing at such time that the Company receives a copy of such notice from the Purchase Contract Agent); and

(ii) Transfer the related Corporate Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit E hereto, whereupon the Purchase Contract Agent, upon completion of the requirements of Section 3.13(a)(i) above, shall promptly provide a direction and instruction to the Collateral Agent, substantially in the form of Exhibit I hereto.

Upon confirmation that the Cash described in clause ((i)) above has been credited to the Collateral Account and receipt of the written instruction to the Collateral Agent described in clause ((ii)) above, the Collateral Agent shall release such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock from the Pledge and instruct the Securities Intermediary by a notice, substantially in the form of Exhibit J hereto, to Transfer the shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby. Notwithstanding anything to the contrary herein, the Securities Intermediary and the Collateral Agent shall take no action to release such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock from the Pledge unless and until the direction is provided by the Purchase Contract Agent substantially in the form of Exhibit I hereto.

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Upon credit to the Collateral Account of Cash delivered by a Holder of Corporate Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the shares of Mandatory Convertible Preferred Stock underlying the appropriate Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

Upon receipt of the shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Purchase Contract Agent shall promptly:

(A) cancel the related Corporate Units;

(B) Transfer such shares of Mandatory Convertible Preferred Stock to the Holder (such shares of Mandatory Convertible Preferred Stock shall constitute Separate Shares of Mandatory Convertible Preferred Stock and be tradable as separate securities, independent of the concurrently created Cash Settled Units) in book-entry form, to the extent a Global Preferred Share is registered in the name of the Depository or its nominee; and

(C) deliver Cash Settled Units in book-entry form, or if applicable, authenticate, execute on behalf of such Holder and deliver Cash Settled Units in the form of a Cash Settled Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Corporate Units.

Holders who elect to separate the shares of Mandatory Convertible Preferred Stock by substituting Cash for Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, the reasonable fees and expenses payable to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary and their respective counsel), in respect of such Collateral Substitution, and neither the Company nor the Purchase Contract Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) In the event a Holder making a Collateral Substitution pursuant to Section 3.13(a) fails to effect a book-entry transfer of the Corporate Units or fails to deliver Corporate Units Certificates to the Purchase Contract Agent after depositing Cash with the Collateral Agent, any distributions on the shares of Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock constituting a part of such Corporate Units, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until such Corporate Units are so transferred or the Corporate Units Certificate is so delivered, as the case may be, or such Holder provides evidence satisfactory to the Company and the Purchase Contract Agent that such Corporate Units Certificate has been destroyed, lost or stolen, together with any indemnity or security that may be required by the Purchase Contract Agent and the Company.

(c) Except as described in Section 5.02, Section 3.12(a), Section 3.13(a) or in connection with an Early Settlement, a Fundamental Change, an Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Corporate Unit remains in effect, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder in respect of the Mandatory Convertible Preferred Stock and the Purchase Contract comprising such Corporate Units may be acquired, and may be transferred and exchanged, only as a Corporate Unit.

Section 3.14. Recreation of Corporate Units from Treasury Units. (a) Subject to the conditions set forth in this Agreement, and subject to the limitations on a Collateral Substitution in connection with an Optional Remarketing, as set forth in Section 5.02(a)(i) below, a Holder of Treasury Units may effect a Collateral Substitution and recreate Corporate Units at any time from and after the date of this Agreement, other than during a Blackout Period; *provided* that Holders of Treasury Units may only recreate Corporate Units in integral multiples of 10 Treasury Units. To recreate Corporate Units, the Holder must:

(i) Transfer to the Collateral Agent, for credit to the Collateral Account, a number of shares of Mandatory Convertible Preferred Stock or security entitlements with respect thereto equal to the number of Corporate Units to be created *divided by* 10 (such amount shall, following receipt by the Company from the Purchase Contract Agent of a copy of the instruction from the Holder to the Purchase Contract Agent in the form of Exhibit D, be calculated by the Company and provided to the Purchase Contract Agent in writing at such time that the Company receives a copy of such notice from the Purchase Contract Agent); and

(ii) Transfer the related Treasury Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit D hereto, whereupon the Purchase Contract Agent, upon completion of the requirements of Section 3.14(a)(i) above, shall (in accordance with the instructions provided for in the aforementioned notice from the Holder) promptly provide an instruction to the Collateral Agent substantially in the form of Exhibit K hereto.

Upon confirmation that the shares of Mandatory Convertible Preferred Stock described in clause ((i)) above or security entitlements with respect thereto have been credited to the Collateral Account and receipt of the written instruction from the Purchase Contract Agent described in clause ((ii)) above, the Collateral Agent shall release the related Treasury Securities from the Pledge by directing the Securities Intermediary by a notice, substantially in the form of Exhibit L hereto, to Transfer the Treasury Securities described above to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

The substituted Mandatory Convertible Preferred Stock will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

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Upon credit to the Collateral Account of shares of Mandatory Convertible Preferred Stock or security entitlements with respect thereto delivered by a Holder of Treasury Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Treasury Securities described above to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby. Notwithstanding anything to the contrary herein, the Securities Intermediary and the Collateral Agent shall take no action to release such Treasury Security from the Pledge unless and until the direction is provided by the Purchase Contract Agent substantially in the form of Exhibit K hereto.

Upon receipt of such Treasury Securities, the Purchase Contract Agent shall promptly:

- (A) cancel the related Treasury Units;
- (B) Transfer the Treasury Securities to the Holder; and
- (C) cause the Collateral Agent to deliver Corporate Units in book-entry form or, if applicable, cause the Collateral Agent to deliver the Corporate Units to the Purchase Contract Agent, upon receipt of which, the Purchase Contract Agent shall authenticate, execute on behalf of such Holder as the attorney-in-fact of such Holder and deliver Corporate Units in the form of a Corporate Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Treasury Units.

Holders who elect to recreate Corporate Units shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, the reasonable fees and expenses payable to the Purchase Contract Agent and the Collateral Agent and their respective counsel), in respect of the recreation, and neither the Company nor the Purchase Contract Agent nor the Collateral Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) Except as provided in Section 5.02 or in Section 3.14(a) or in connection with an Early Settlement, a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Treasury Unit remains in effect, such Treasury Unit shall not be separable into its constituent parts and the rights and obligations of the Holder of such Treasury Unit in respect of the interest in the Treasury Security and the Purchase Contract comprising such Treasury Unit may be acquired, and may be transferred and exchanged, only as a Treasury Unit.

Section 3.15. Recreation of Corporate Units from Cash Settled Units. (a) Subject to the conditions set forth in this Agreement, if a Remarketing Failure occurs, a Holder of Cash Settled Units may effect a Collateral Substitution and recreate Corporate Units from and after the open of business on the Business Day immediately succeeding the last day of the Final Remarketing Period (or the date of the relevant failure under the Remarketing Agreement, as the case may be), until 4:00 p.m., New York City time, on the second Business Day immediately prior to the Purchase Contract Settlement Date; *provided* that Holders of Cash Settled Units may only recreate Corporate Units in integral multiples of 10 Cash Settled Units. To recreate Corporate Units, the Holder must:

(i) Transfer to the Collateral Agent, for credit to the Collateral Account, a number of shares of Mandatory Convertible Preferred Stock or security entitlements with respect thereto equal to the number of Corporate Units to be created *divided by* 10 (such amount shall, following receipt by the Company from the Purchase Contract Agent of a copy of the instruction from the Holder to the Purchase Contract Agent in the form of Exhibit D, be calculated by the Company and provided to the Purchase Contract Agent in writing at such time that the Company receives a copy of such notice from the Purchase Contract Agent); and

(ii) Transfer the related Cash Settled Units to the Purchase Contract Agent accompanied by a notice to the Purchase Contract Agent, substantially in the form of Exhibit D hereto, whereupon the Purchase Contract Agent, upon completion of the requirements of Section 3.15(a)(i) above, shall promptly provide an instruction to the Collateral Agent, substantially in the form of Exhibit K hereto.

Upon confirmation that the shares of Mandatory Convertible Preferred Stock described in clause ((i)) above or security entitlements with respect thereto have been credited to the Collateral Account and receipt of the written instruction from the Purchase Contract Agent described in clause ((ii)) above, the Collateral Agent shall (i) release the related Cash from the Pledge and (ii) instruct the Securities Intermediary by a notice, substantially in the form of Exhibit L hereto, to Transfer the Cash described above to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby.

The substituted Mandatory Convertible Preferred Stock will be pledged to the Company through the Collateral Agent to secure such Holder's obligation to purchase shares of Common Stock under the related Purchase Contract.

Upon credit to the Collateral Account of shares of Mandatory Convertible Preferred Stock or security entitlements with respect thereto delivered by a Holder of Cash Settled Units and receipt of the related instruction from the Collateral Agent, the Securities Intermediary shall promptly Transfer the Cash described above to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, free and clear of the Pledge created hereby. Notwithstanding anything to the contrary herein, the Securities Intermediary and the Collateral Agent shall take no action to release such Cash from the Pledge unless and until the direction is provided by the Purchase Contract Agent substantially in the form of Exhibit K hereto.

Upon receipt of such Cash, the Purchase Contract Agent shall promptly:

- (A) cancel the related Cash Settled Units;
- (B) Transfer the related Cash to the Holder; and

(C) cause the Collateral Agent to deliver Corporate Units in book-entry form or, if applicable, cause the Collateral Agent to deliver the Corporate Units to the Purchase Contract Agent, upon receipt of which the Purchase Contract Agent shall authenticate, execute on behalf of such Holder and deliver Corporate Units in the form of a Corporate Units Certificate executed by the Company in accordance with Section 3.03 evidencing the same number of Purchase Contracts as were evidenced by the cancelled Cash Settled Units.

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Holders who elect to recreate Corporate Units shall be responsible for any taxes, governmental charges or other fees or expenses (including, without limitation, the reasonable fees and expenses payable to the Purchase Contract Agent and the Collateral Agent and their respective counsel), in respect of the recreation, and neither the Company nor the Purchase Contract Agent shall be responsible for any such taxes, governmental charges or other fees or expenses.

(b) Except as provided in Section 5.02 or in Section 3.15(a) or in connection with a Fundamental Change Early Settlement or a Termination Event, for so long as the Purchase Contract underlying a Cash Settled Unit remains in effect, such Cash Settled Unit shall not be separable into its constituent parts and the rights and obligations of the Holder of such Cash Settled Unit in respect of the interest in the Cash and the Purchase Contract comprising such Cash Settled Unit may be acquired, and may be transferred and exchanged, only as a Cash Settled Unit.

Section 3.16. Transfer of Collateral Upon Occurrence of Termination Event. (a) Upon the occurrence of a Termination Event, the Company shall notify the Purchase Contract Agent and the Collateral Agent in writing of the occurrence thereof and request that the Collateral Agent request the Securities Intermediary to release the Collateral from the Pledge. Upon receipt by the Collateral Agent of such written notice or written notice pursuant to Section 5.05 hereof from the Company that a Termination Event has occurred, the Collateral Agent shall promptly release all Collateral from the Pledge by directing the Securities Intermediary to Transfer all (in accordance with the instructions provided for in the aforementioned notice from the Company):

- (i) shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements with respect thereto or Pledged Applicable Ownership Interests in the Treasury Portfolio;
- (ii) Pledged Treasury Securities;
- (iii) Pledged Cash;
- (iv) payments by Holders (or the Permitted Investments of such payments) pursuant to Section 5.02 hereof; and
- (v) Proceeds and all other payments the Collateral Agent receives in respect of the foregoing,

to the Purchase Contract Agent for the benefit of the Holders for distribution to such Holders as instructed by such Holders to the Purchase Contract Agent in accordance with the terms provided for herein, in accordance with their respective interests, free and clear of the Pledge created hereby; *provided, however*, if any Holder or Beneficial Owner shall be entitled to receive shares of Mandatory Convertible Preferred Stock in any non-integral number, the Purchase Contract Agent shall request, on behalf of such Holder or Beneficial Owner, as the attorney-in-fact of such Holder or Beneficial Owner, pursuant to the Certificate of Designations that the Company

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shall issue fractional shares of Mandatory Convertible Preferred Stock, each with a liquidation preference of \$100, or integral multiples thereof, in exchange for whole shares of Mandatory Convertible Preferred Stock or integral multiples thereof; and *provided further*, if any Holder shall be entitled to receive, with respect to its Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, any securities having a principal amount at maturity of less than the minimum denominations thereof, the Purchase Contract Agent shall dispose of such Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities for Cash and deliver to such Holder Cash in lieu of delivering the Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities, as the case may be, upon receipt of and in accordance with instructions to be separately provided by such Holder.

(b) Notwithstanding anything to the contrary in Section 3.16(a), if such Termination Event shall result from the Company's becoming a debtor under the Bankruptcy Code, and if the Collateral Agent shall for any reason fail promptly to effectuate the release and Transfer of all shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, Applicable Ownership Interests in the Treasury Portfolio, Pledged Cash, Pledged Treasury Securities and payments by Holders (or the Permitted Investments of such payments) pursuant to Section 5.02 and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, as the case may be, as provided by Section 3.16(a), the Company shall use its best efforts to obtain an opinion of a nationally recognized law firm to the effect that, notwithstanding the Company's being the debtor in such a bankruptcy case, the Collateral Agent will not be prohibited from releasing or Transferring the Collateral as provided in Section 3.16(a), and shall deliver or cause to be delivered such opinion addressed to the Collateral Agent within ten days after the occurrence of such Termination Event, and if (A) the Company shall be unable to obtain such opinion within ten days after the occurrence of such Termination Event or (B) the Collateral Agent shall continue, after delivery of such opinion, to refuse to effectuate the release and Transfer of all shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, Applicable Ownership Interests in the Treasury Portfolio, Pledged Cash, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments of such payments) pursuant to Section 5.02 hereof and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, as the case may be, as provided in Section 3.16(a), then the Purchase Contract Agent shall within fifteen days after its receipt of written notice from the Company of the occurrence of such Termination Event commence an action or proceeding in the court having jurisdiction of the Company's case under the Bankruptcy Code seeking an order requiring the Collateral Agent to effectuate the release and transfer of all shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, Applicable Ownership Interests in the Treasury Portfolio, Pledged Cash, Pledged Treasury Securities and the payments by Holders (or the Permitted Investments of such payments) pursuant to Section 5.02 hereof and Proceeds and all other payments received by the Collateral Agent in respect of the foregoing, or as the case may be, as provided by Section 3.16(a).



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(c) Upon receipt by the Purchase Contract Agent of written notice from the Company pursuant to Section 5.05 hereof that a Termination Event has occurred and the Transfer to the Purchase Contract Agent of the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio, the Pledged Cash or the Pledged Treasury Securities, as the case may be, pursuant to Section 3.16(a), the Purchase Contract Agent shall request transfer instructions with respect to such Mandatory Convertible Preferred Stock, Applicable Ownership Interests in the Treasury Portfolio, Pledged Cash or Pledged Treasury Securities, as the case may be, from each Holder by written request, substantially in the form of Exhibit F hereto, mailed to such Holder at its address as it appears in the Security Register.

(d) Upon book-entry transfer of the Corporate Units, the Treasury Units or the Cash Settled Units or delivery of a Corporate Units Certificate, Treasury Units Certificate or Cash Settled Units Certificate to the Purchase Contract Agent with such transfer instructions in connection with a Termination Event, the Purchase Contract Agent shall transfer the shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio, the applicable Treasury Securities or Pledged Cash, as the case may be, underlying such Corporate Units, Treasury Units or Cash Settled Units, as the case may be, to such Holder by book-entry transfer, or other appropriate procedures, in accordance with such instructions and, in the case of the shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, in accordance with the terms of the Certificate of Designations. In the event a Holder of Corporate Units, Treasury Units or Cash Settled Units fails to deliver transfer instructions or effect such transfer or delivery, the shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio, the applicable Treasury Securities or Pledged Cash, as the case may be, underlying such Corporate Units, Treasury Units or Cash Settled Units, as the case may be, and any distributions thereon, shall be held in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder, until the earlier to occur of:

(i) the transfer of such Corporate Units, Treasury Units or Cash Settled Units or surrender of the Corporate Units Certificate, Treasury Units Certificate or Cash Settled Units Certificate or the receipt by the Company and the Purchase Contract Agent from such Holder of satisfactory evidence that such Corporate Units Certificate, Treasury Units Certificate or Cash Settled Units Certificate has been destroyed, lost or stolen, together with any indemnity and/or security that may be required by the Purchase Contract Agent and the Company; and

(ii) the expiration of the time period specified by the applicable law governing abandoned property in the state in which the Purchase Contract Agent holds such property.

Notwithstanding the foregoing, upon written instruction from the Company, the Purchase Contract Agent shall deliver to the Company any funds or property held for two years, in which event the Company shall have sole responsibility for compliance with all applicable escheat laws with respect to all funds or property returned to it pursuant to this sentence.

Section 3.17. No Consent to Assumption. Each Holder of a Unit, by acceptance thereof, shall be deemed expressly to have (a) withheld any consent to the assumption under Section 365 of the Bankruptcy Code or otherwise, of the Purchase Contract by the Company or its trustee, receiver, liquidator or a person or entity performing similar functions in the event that the Company becomes a debtor under the Bankruptcy Code or subject to other similar state or Federal law providing for reorganization or liquidation and (b) agreed with the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary that the transaction contemplated by the Purchase Contract constitutes a “swap agreement” within the meaning of Section 101 (53B) of the Bankruptcy Code and that each such Holder shall constitute a “swap participant” within the meaning of Section 101 (53C) of the Bankruptcy Code.

Section 3.18. Substitutions. Whenever a Holder has the right to substitute Cash or shares of Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock, as the case may be, or security entitlements for any of them for financial assets held in the Collateral Account, such substitution shall not constitute a novation of the security interest created hereby.

#### ARTICLE 4

##### THE MANDATORY CONVERTIBLE PREFERRED STOCK

Section 4.01. Payments; Rights to Payments Preserved. (a) The Collateral Agent shall transfer all income and distributions (other than those described in Section 4.02(a)) received by it on account of the shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock (if the Pledged Convertible Preferred Share is in the name of the Collateral Agent), the Applicable Ownership Interests in the Treasury Portfolio, the Treasury Securities or Permitted Investments from time to time held in the Collateral Account to the Purchase Contract Agent, according to transfer instructions to be provided by the Purchase Contract Agent and the Collateral Agent in writing, for distribution to the applicable Holders as provided in this Agreement and the Purchase Contracts, free and clear of the Pledge created hereby.

(b) Any payment on any share of Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock or any distribution in respect of a Unit on any Applicable Ownership Interests in the Treasury Portfolio (in each case other than those described in Section 4.02(a)), as the case may be, which is paid on or immediately prior to any Contract Adjustment Payment Date shall, subject to receipt thereof by the Purchase Contract Agent in its capacity as paying agent from the Company or from the Collateral Agent as provided in Section 4.01(a) above, be paid on the related Contract Adjustment Payment Date to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) of which such Applicable Ownership Interests in Mandatory Convertible Preferred Stock or Applicable Ownership Interests in the Treasury Portfolio, as the case may be, form a part is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. If the book-entry system for the Units has been terminated, any such payment will be payable by check mailed to the address of the Person entitled thereto at such Person’s address as it appears on the Security Register, or, if such Person so requests and designates an account in writing to the Purchase Contract Agent in its capacity as paying agent at least five Business Days prior to the relevant Payment Date, by wire transfer to such account.

(c) Each Corporate Units Certificate evidencing Applicable Ownership Interests in the Treasury Portfolio delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of any other Corporate Units Certificate shall carry the right to accrued interest which was carried by Applicable Ownership Interests in the Treasury Portfolio (if any) underlying such other Corporate Units Certificate.

(d) In the case of any Corporate Unit with respect to which (1) Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.06(a) hereof, (2) Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.04 hereof or (3) a Collateral Substitution is properly effected pursuant to Section 3.12(a) or Section 3.13(a), in each case on a date that is after any Record Date and prior to or on the next succeeding Contract Adjustment Payment Date, distributions on Applicable Ownership Interests in the Treasury Portfolio (if any) underlying such Corporate Units otherwise payable on such Contract Adjustment Payment Date shall be payable on such Contract Adjustment Payment Date notwithstanding such Early Settlement, Fundamental Change Early Settlement or Collateral Substitution, and distributions shall, subject to receipt thereof by the Purchase Contract Agent, be payable to the Person in whose name the Corporate Units Certificate (or one or more Predecessor Corporate Units Certificates) was registered at the close of business on the Record Date.

(e) In the case of any Treasury Unit with respect to which (1) Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.06(a) hereof, (2) Fundamental Change Early Settlement of the underlying Purchase Contract is properly effected pursuant to Section 5.04 hereof or (3) a Collateral Substitution is properly effected pursuant to Section 3.14(a), in each case on a date that is after any Record Date and prior to or on the next succeeding Contract Adjustment Payment Date, distributions in respect of the Treasury Securities underlying such Treasury Unit otherwise payable on such Contract Adjustment Payment Date (if any) shall be payable on such Contract Adjustment Payment Date notwithstanding such Early Settlement, Fundamental Change Early Settlement or Collateral Substitution, and such payment or distributions shall, subject to receipt thereof by the Purchase Contract Agent, be payable to the Person in whose name the Treasury Units Certificate (or one or more Predecessor Treasury Units Certificates) was registered at the close of business on the Record Date.

(f) Except as otherwise expressly provided in Section 4.01(d) hereof, in the case of any Corporate Unit with respect to which Early Settlement or Fundamental Change Early Settlement of the component Purchase Contract is properly effected, or with respect to which a Collateral Substitution has been effected, payments attributable to the shares of Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock, if any, or distributions on Applicable Ownership Interests in the Treasury Portfolio, as the case may be, that would otherwise be payable on or made after the Early Settlement Date, Fundamental Change Early Settlement Date or the date of the Collateral Substitution, as the case may be, shall not be payable hereunder to the Holder of such Corporate Units; *provided, however*, that to the extent that such Holder continues to hold Separate Shares of Mandatory Convertible Preferred Stock or Applicable Ownership Interests in the Treasury Portfolio that formerly comprised a part of such Holder's Corporate Units, such Holder shall be entitled to receive dividends, if any, on such Separate Shares of Mandatory Convertible Preferred Stock or distributions on such Applicable Ownership Interests in the Treasury Portfolio.

Section 4.02. Payments Prior to or on Purchase Contract Settlement Date. (a) Subject to the provisions of Section 5.02, Section 5.04 and Section 5.06(a), and except as provided in Section 4.02(b) below, if no Termination Event shall have occurred, all payments received by the Securities Intermediary in respect of (1) the proceeds received in a Successful Remarketing attributable to the shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, (2) the Pledged Applicable Ownership Interests in the Treasury Portfolio and (3) the Pledged Treasury Securities, shall be credited to the Collateral Account, to be invested as directed in writing by the Company in Permitted Investments until the Purchase Contract Settlement Date, and such payments (or proceeds of such Permitted Investments, if applicable), shall be transferred to the Company on the Purchase Contract Settlement Date as provided in Section 5.02 hereof to the extent necessary to satisfy the Holder's obligation pursuant to Section 5.01 hereof to pay the Purchase Price to settle the Purchase Contracts. Any balance thereafter remaining in the Collateral Account shall be released from the Pledge and transferred to the Purchase Contract Agent for the benefit of the applicable Holders as their attorney-in-fact for distribution to such Holders in accordance with their respective interests pursuant to Section 11.02 hereof, free and clear of the Pledge created hereby. The Company shall instruct the Collateral Agent in writing as to the specific Permitted Investments in which any payments made under this Section 4.02(a) shall be invested, *provided, however*, that if the Company fails to deliver such instructions by 10:30 a.m. (New York City time) on the day such payments are received by the Securities Intermediary, the Collateral Agent shall instruct the Securities Intermediary to invest such payments in the Permitted Investments (if any), which have been designated by the Company in writing from time to time in a standing instruction to the Securities Intermediary which shall be effective until revoked or superseded. If no such standing instruction exists, such funds shall remain uninvested with no liability for interest therein. In no event shall the Collateral Agent or the Securities Intermediary be liable for the selection of Permitted Investments or for investment losses incurred thereon; *provided, further, however*, that all Permitted Investments shall mature on or prior to the Purchase Contract Settlement Date. In no event shall the Collateral Agent or the Securities Intermediary be liable for the selection of Permitted Investments or for any losses, fees, taxes or other charges arising from any investment, reinvestment or liquidation of Permitted Investments made hereunder. Neither the Collateral Agent nor the Securities Intermediary shall have any liability in respect of losses, fees, taxes or other charges incurred based on acting or omitting to act under this Section 4.02(a) pursuant to any direction of the Company or as a result of the failure of the Company to provide timely written investment direction. Any interest or other income received on such investment and reinvestment of the funds shall become part of the Collateral Account and any losses, fees, taxes or other charges incurred on such investment and reinvestment of the funds shall be debited against the Collateral Account. For the avoidance of doubt, no such losses, fees, taxes or other charges shall affect the Company's obligations under Article 5 and Holders' obligations shall remain subject to Section 5.02(i). It is agreed and understood that the entity serving as Purchase Contract Agent, Collateral Agent or Securities Intermediary may earn fees associated with the investments outlined above in accordance with the terms of such investments. In no event shall the Purchase Contract Agent, Securities Intermediary or the Collateral Agent be deemed an investment manager or adviser in respect of any selection of investments hereunder. It is understood and agreed that the Purchase Contract

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Agent, Securities Intermediary or the Collateral Agent or their respective affiliates are permitted to receive additional compensation that could be deemed to be in the Purchase Contract Agent's, Securities Intermediary's or the Collateral Agent's economic self-interest for (1) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub custodian with respect to certain of the investments, (2) using affiliates to effect transactions in certain investments and (3) effecting transactions in investments.

(b) All payments received by the Securities Intermediary in respect of (1) the Mandatory Convertible Preferred Stock, (2) the Applicable Ownership Interests in the Treasury Portfolio and (3) the Treasury Securities or security entitlements with respect thereto, that, in each case, have been released from the Pledge pursuant hereto shall be transferred to the Purchase Contract Agent for the benefit of the applicable Holders for distribution to such Holders in accordance with their respective interests and the terms of this Agreement.

(c) Reserved.

Section 4.03. Notice and Voting. (a) Subject to Section 4.03(b) hereof, the Purchase Contract Agent shall exercise, or refrain from exercising, any and all voting and other consensual rights pertaining to the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or any part thereof for any purpose not inconsistent with the terms of this Agreement. Upon receipt of any notices and other communications in respect of any Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, including either notice of any meeting at which holders of the Mandatory Convertible Preferred Stock are entitled to vote or the solicitation of consents, waivers or proxies of holders of the Mandatory Convertible Preferred Stock, the Collateral Agent shall use commercially reasonable efforts to send promptly to the Purchase Contract Agent such notice or communication, and as soon as reasonably practicable after receipt of a written request therefor from the Purchase Contract Agent acting as attorney-in-fact for the Holders, to execute and deliver to the Purchase Contract Agent such proxies and other instruments in respect of such Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock (in commercially reasonable form and substance) as are prepared by the Company and delivered to the Collateral Agent for delivery to the Purchase Contract Agent with respect to the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock.

(b) Upon receipt of notice of any meeting at which holders of Mandatory Convertible Preferred Stock are entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Mandatory Convertible Preferred Stock, the Purchase Contract Agent shall, as soon as practicable thereafter, mail, first class, postage pre-paid, to the Holders of Corporate Units a notice:

(i) containing such information as is contained in the notice or solicitation;

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(ii) stating that each Holder on the record date set by the Purchase Contract Agent therefor (which, to the extent possible, shall be the same date as the record date set by the Company for determining the holders of shares of Mandatory Convertible Preferred Stock entitled to vote) shall be entitled to instruct the Purchase Contract Agent in writing as to the exercise of the voting rights pertaining to the Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are a component of their Corporate Units; and

(iii) stating the manner in which such instructions may be given.

Upon the written request of the Holders of Corporate Units on such record date (which must be received by the Purchase Contract Agent at least six days prior to such meeting) or the expiration date of any consent solicitation, the Purchase Contract Agent shall endeavor insofar as practicable to vote or cause to be voted or to consent with respect to, in accordance with the instructions set forth in such requests, the maximum aggregate number of shares of Mandatory Convertible Preferred Stock as to which any particular voting or consenting instructions are received. In the absence of specific instructions from the Holder of Corporate Units, the Purchase Contract Agent shall abstain from voting or consenting with respect to the Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are a component of such Corporate Units. The Company hereby agrees, if applicable, to solicit Holders of Corporate Units to timely instruct the Purchase Contract Agent in writing as to the exercise of such voting or consenting rights in order to enable the Purchase Contract Agent to vote or consent with respect to such Mandatory Convertible Preferred Stock as the attorney-in-fact for the Holders. Notwithstanding anything in this Agreement to the contrary, in the event that such Mandatory Convertible Preferred Stock are held by or through DTC or another Depository, the exercise of a Holder's right to vote shall occur in conformity with the Applicable Procedures and standing arrangements between DTC or such Depository and the Company or the Purchase Contract Agent.

(c) The Holders of Corporate Units, the Holders of Cash Settled Units and the Holders of Treasury Units shall, in their capacity as Holders, have no voting rights, rights to dividends or other distributions or other rights in respect of Common Stock.

(d) Notwithstanding anything herein to the contrary, with respect to any Global Certificate held through DTC (or a nominee thereof), each Person holding a beneficial interest in such Global Certificate may be considered to be a "Holder" of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests Mandatory Convertible Preferred Stock for purposes of voting on the matters relating thereto (for example, such Person holding a beneficial interest in such Global Certificate may consent to any waiver or amendment directly without requiring the participation of DTC or its nominee); it being understood that if such Person holding a beneficial interest in such Global Certificate is authorized pursuant to an official DTC proxy, or if the Purchase Contract Agent receives evidence satisfactory to the Purchase Contract Agent (in its sole discretion) that (a) such Person holds the beneficial interests in such Global Certificate that it purports to vote (such evidence of ownership may include a securities position or participant list or other information obtained from DTC) and (b) such beneficial interest in such Global Certificate shall remain so owned for purposes of such vote, then the Purchase Contract Agent may recognize such Person for purposes of voting.

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(e) In connection with any vote of the Holders as required under the terms hereof, the Purchase Contract Agent may at the expense of the Company appoint an independent third party solicitation agent (the “**Solicitation Agent**”) to conduct any solicitation of consents as required under the terms hereof. The Solicitation Agent shall report the results of any such solicitation taken under the terms hereof to the Purchase Contract Agent to enable the Purchase Contract Agent to exercise the voting rights of such Holders as the attorney-in-fact for such Holders. In the absence of gross negligence or willful misconduct by the Purchase Contract Agent, the Purchase Contract Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon the results provided to it by such Solicitation Agent.

Section 4.04. Payments to Purchase Contract Agent. The Securities Intermediary shall use commercially reasonable efforts to deliver any payments required to be made by it to the Purchase Contract Agent hereunder to the account designated by the Purchase Contract Agent for such purpose not later than 10:00 a.m. (New York City time) on the Business Day such payment is received by the Securities Intermediary; *provided, however*, that if such payment is received by the Securities Intermediary on a day that is not a Business Day or after 10:00 a.m. (New York City time) on a Business Day, then the Securities Intermediary shall use commercially reasonable efforts to deliver such payment to the Purchase Contract Agent no later than 10:00 a.m. (New York City time) on the next succeeding Business Day. In connection with the Transfer of any Treasury Securities to the Purchase Contract Agent hereunder, the Collateral Agent shall cause such Transfer to be made at the Corporate Trust Office.

Section 4.05. Payments Held In Trust. If the Purchase Contract Agent or any Holder shall receive any payments on account of financial assets credited to the Collateral Account and not released therefrom in accordance with this Agreement, the Purchase Contract Agent or such Holder shall hold such payments as trustee of an express trust for the benefit of the Company and, upon receipt of an Officer’s Certificate of the Company so directing, promptly deliver such payments to the Securities Intermediary for credit to the Collateral Account or to the Company for application to the Obligations of the applicable Holder or Holders, and the Purchase Contract Agent and Holders shall acquire no right, title or interest in any such payments of principal amounts so received.

## ARTICLE 5

### THE PURCHASE CONTRACTS

Section 5.01. Purchase of Shares of Common Stock. (a) Each Purchase Contract shall obligate the Holder of the related Unit to purchase from the Company, and the Company to issue and deliver, on the Purchase Contract Settlement Date at a price equal to the Stated Amount (the “**Purchase Price**”), a number of shares of Common Stock equal to the Settlement Rate, together with Cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 5.07, unless an Early Settlement Date, a Fundamental Change Early Settlement or a Termination Event with respect to the Units of which such Purchase Contract is a part shall have occurred, subject to Section 5.04.

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The “**Settlement Rate**” is determined as follows:

(i) if the Applicable Market Value is less than or equal to the Reference Price, the Settlement Rate shall be 4.0800 shares of Common Stock (such Settlement Rate, subject to adjustment as provided in Section 5.11, the “**Maximum Settlement Rate**”); and

(ii) if the Applicable Market Value is greater than the Reference Price, the Settlement Rate shall be a number of shares of Common Stock equal to the Stated Amount, *divided by* the Applicable Market Value, rounded to the nearest 1/10,000th of a share.

The Maximum Settlement Rate is subject to adjustment as provided in Section 5.11 and shall be rounded upward or downward to the nearest 1/10,000th of a share.

(b) Each Holder and Beneficial Owner of a Corporate Unit, a Treasury Unit or a Cash Settled Unit, by its acceptance of such Unit:

(i) irrevocably authorizes the Purchase Contract Agent to enter into and perform the related Purchase Contract on its behalf as its attorney-in-fact (including, without limitation, the execution of Certificates in the name of and on behalf of such Holder);

(ii) agrees to be bound by the terms and provisions of such Unit, including but not limited to the terms and provisions of the Purchase Contract and this Agreement, for so long as such Holder remains a Holder of such Unit;

(iii) covenants and agrees to perform its obligations under such Purchase Contract and under this Agreement for so long as such Holder remains a Holder of a Corporate Unit, a Treasury Unit or a Cash Settled Unit;

(iv) consents to the provisions hereof;

(v) irrevocably authorizes the Purchase Contract Agent to enter into and perform this Agreement on its behalf and in its name as its attorney-in-fact;

(vi) consents to, and agrees to be bound by, the Pledge of such Holder’s right, title and interest in and to its applicable portion of the Collateral, including the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and the Applicable Ownership Interests in the Treasury Portfolio, the Treasury Securities or the Cash pursuant to this Agreement, and the delivery of the shares of Mandatory Convertible Preferred Stock underlying such Applicable Ownership Interests in Mandatory Convertible Preferred Stock by the Transfer Agent on behalf of the Purchase Contract Agent to the Collateral Agent; and

(vii) for United States federal income tax purposes, agrees to (A) treat the acquisition of the Corporate Units as an acquisition of the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and Purchase Contracts constituting the Corporate Units, (B) treat such Applicable Ownership Interests in Mandatory Convertible Preferred Stock as equity of the Company, (C) allocate, as of the date hereof,



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100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as \$0 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interest in Mandatory Convertible Preferred Stock as \$100, and (D) treat the Beneficial Owner as the owner of the applicable interests in the Collateral, including the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio, the Treasury Securities or the Cash, as applicable;

*provided* that upon a Termination Event, the rights of the Holder of such Units under the Purchase Contract may be enforced without regard to any other rights or obligations.

(c) Each Holder of a Corporate Unit, a Treasury Unit or a Cash Settled Unit, by its acceptance thereof, further covenants and agrees that to the extent and in the manner provided in Section 5.02 hereof, but subject to the terms thereof, on the Purchase Contract Settlement Date, Proceeds of the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Pledged Applicable Ownership Interests in the Treasury Portfolio, the Pledged Treasury Securities or the Pledged Cash, as applicable, equal to the Purchase Price shall be paid by the Collateral Agent, upon the written direction of the Company, to the Company in satisfaction of such Holder's obligations under the Purchase Contract underlying such Unit and such Holder shall acquire no right, title or interest in such Proceeds.

(d) Upon registration of transfer of a Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee) by the terms of this Agreement and the Purchase Contracts underlying such Certificate and the transferor shall be released from the obligations under this Agreement and the Purchase Contracts underlying the Certificate so transferred. The Company covenants and agrees, and each Holder of a Certificate, by its acceptance thereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

(e) Promptly after the calculation of the Settlement Rate and the Applicable Market Value, the Company shall give the Purchase Contract Agent written notice thereof. All calculations and determinations of the Settlement Rate and the Applicable Market Value and all other calculations and determinations hereunder and any adjustments to the Reference Price shall be made by the Company or its agent based on their good faith calculations, and the Purchase Contract Agent shall have no responsibility with respect thereto.

(f) If a Market Disruption Event occurs on any Scheduled Trading Day during the Market Value Averaging Period or any Early Settlement Averaging Period, the Company shall give the Holders and the Purchase Contract Agent written notice thereof on the calendar day on which such event occurs.

Section 5.02. Remarketing; Notices; Separate Shares of Mandatory Convertible Preferred Stock; Registration; Payment of Purchase Price.

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(a) Optional Remarketing. (i) Unless a Termination Event has occurred, the Company may elect, at its option, to engage the Remarketing Agent(s), pursuant to the terms of the Remarketing Agreement, to remarket the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the aggregate Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are components of Corporate Units, along with any Separate Shares of Mandatory Convertible Preferred Stock, the holders of which have elected to participate in such Remarketing pursuant to Section 5.02(d) below over a period of fifteen consecutive Business Days (each such period, an “**Optional Remarketing Period**”) selected by the Company that falls during the Optional Remarketing Window.

(ii) The Company shall issue a press release and notify the Purchase Contract Agent and the Custodial Agent in writing and request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Shares of Mandatory Convertible Preferred Stock as to the dates and procedures to be followed in any Optional Remarketing no later than fifteen (15) calendar days prior to the first day of an Optional Remarketing Period, and the Company shall provide a copy of such request to the Purchase Contract Agent, the Collateral Agent and the Custodial Agent.

(iii) If the Company elects to conduct an Optional Remarketing, by 11:00 a.m. (New York City time) on the Business Day immediately preceding the first day of an Optional Remarketing Period, the Company shall notify (i) the Purchase Contract Agent in writing of the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are a part of the Corporate Units to be remarketed and (ii) the Custodial Agent in writing of the aggregate number of Separate Shares of Mandatory Convertible Preferred Stock (if any) to be remarketed pursuant to Section 5.02(d) below, and upon receipt of such written notice, (i) the Purchase Contract Agent shall notify in writing the Remarketing Agent(s) identified in such notice of the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are a part of the Corporate Units to be remarketed, and (ii) the Custodial Agent shall notify in writing the Remarketing Agent(s) identified in such notice of the aggregate number of Separate Shares of Mandatory Convertible Preferred Stock (if any) to be remarketed pursuant to Section 5.02(d) below. The Company shall, and pursuant to, and subject to the terms of, the Remarketing Agreement, upon receipt of such notices from the Purchase Contract Agent and the Custodial Agent, the Company shall cause the Remarketing Agent(s) pursuant to the Remarketing Agreement to, use its reasonable best efforts to remarket such shares of Mandatory Convertible Preferred Stock. For the avoidance of doubt, and without limiting the generality of the foregoing, the Company and its Board of Directors shall accept the terms of a Successful Optional Remarketing if the Closing Price of the Common Stock at the time of any scheduled, proposed or purported Optional Remarketing Date is above the Threshold Appreciation Price. The Company shall use commercially reasonable efforts to cooperate with the Purchase Contract Agent in connection with any Optional Remarketing and shall notify the Purchase Contract Agent in writing promptly upon becoming aware of the expected Remarketing Date in connection with such Optional Remarketing.

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(iv) If the Remarketing Agent(s) is able to remarket such Mandatory Convertible Preferred Stock for at least the applicable Remarketing Price in any Optional Remarketing in accordance with the Remarketing Agreement (a “**Successful Optional Remarketing**”), the Company shall notify the Collateral Agent and the Custodial Agent thereof in writing and upon receipt of such notice, the Collateral Agent shall cause the Securities Intermediary to transfer to the Remarketing Agent(s) the remarketed Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock upon confirmation of deposit to the Collateral Account of proceeds of such Successful Optional Remarketing attributable to such Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, and the Custodial Agent shall transfer the remarketed Separate Shares of Mandatory Convertible Preferred Stock to the Remarketing Agent(s) upon confirmation of deposit to the separate account established by the Custodial Agent for the purpose of receiving such proceeds (the “**Separate Account**”), of receipt of proceeds of such Successful Optional Remarketing attributable to such Separate Shares of Mandatory Convertible Preferred Stock. Settlement shall occur on the Optional Remarketing Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarketed Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Collateral Agent shall, upon receipt of written instructions from the Company, (A) instruct the Securities Intermediary to apply an amount equal to the Treasury Portfolio Purchase Price to purchase the Treasury Portfolio from the Quotation Agent (the amount and issue of the U.S. Treasury securities (or principal or interest strips thereof) constituting the Treasury Portfolio to be determined by the Remarketing Agent(s), who shall provide such information to the Collateral Agent and the Quotation Agent, and the Quotation Agent will then determine, and notify the Collateral Agent of, the Treasury Portfolio Purchase Price), and (B) credit to the Collateral Account the Applicable Ownership Interests in the Treasury Portfolio, and (C) promptly remit any remaining portion of such proceeds to the Purchase Contract Agent for payment to the Holders of Corporate Units, whereupon the Purchase Contract Agent shall make such payment on the Optional Remarketing Settlement Date to the Holders whose Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock were remarketed *pro rata* in accordance with their respective interests. With respect to any Separate Shares of Mandatory Convertible Preferred Stock remarketed, upon receipt of proceeds of such Successful Optional Remarketing attributable to the remarketed Separate Shares of Mandatory Convertible Preferred Stock, the Custodial Agent shall remit such proceeds of such Separate Shares of Mandatory Convertible Preferred Stock sold in the Successful Optional Remarketing received from the Remarketing Agent(s) *pro rata* to holders of such Separate Shares of Mandatory Convertible Preferred Stock on the Optional Remarketing Settlement Date in accordance with the instructions by such holders provided in the form of Exhibit M

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(v) Following the occurrence of a Successful Optional Remarketing, the Applicable Ownership Interests in the Treasury Portfolio will be substituted as Collateral for the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock and will be held by the Collateral Agent in accordance with the terms hereof to secure the Obligation of each Holder of Corporate Units, and the Holders of Corporate Units and the Collateral Agent shall have such respective rights, obligations and security interests with respect to the Applicable Ownership Interests in the Treasury Portfolio as the Holder of Corporate Units and the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, subject to the Pledge thereof. Any reference in this Agreement or the Certificates to the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall thereupon be deemed to be a reference to such Applicable Ownership Interests in the Treasury Portfolio. The Company may cause to be made in any Corporate Units Certificates thereafter to be issued such change in phraseology and form (but not in substance) as may be appropriate to reflect the substitution of the Applicable Ownership Interests in the Treasury Portfolio for the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock as Collateral.

(vi) Following a Successful Optional Remarketing, the Remarketing Agent(s) shall remit (1) the proceeds attributable to the remarketed Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Collateral Agent and (2) the proceeds attributable to the remarketed Separate Shares of Mandatory Convertible Preferred Stock to the Custodial Agent for the benefit of the holders of Separate Shares of Mandatory Convertible Preferred Stock that had their Separate Shares of Mandatory Convertible Preferred Stock remarketed.

(vii) If, in spite of its reasonable best efforts, the Remarketing Agent(s) cannot remarket the Mandatory Convertible Preferred Stock as set forth above during the Optional Remarketing Period at a price not less than the applicable Remarketing Price or a condition precedent set forth in the Remarketing Agreement is not fulfilled, the Optional Remarketing will be deemed to have been unsuccessful (an “**Unsuccessful Optional Remarketing**”). Promptly after receipt of written notice from the Company of an Unsuccessful Optional Remarketing, the Custodial Agent will return Separate Shares of Mandatory Convertible Preferred Stock that were to be subject to the Optional Remarketing to the appropriate holders thereof in accordance with the instructions by such holders provided in the form of Exhibit M.

(viii) If the Company elects to remarket the Mandatory Convertible Preferred Stock during the Optional Remarketing Period and a Successful Optional Remarketing has not occurred on or prior to the last day of the Optional Remarketing Period, the Company shall cause a notice of the Unsuccessful Optional Remarketing to be provided in writing to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published before the open of business on the Business Day immediately following the last date of the Optional Remarketing Period. This notice shall be validly published by making a timely release to any appropriate news agency, including, without limitation, Bloomberg Business News and the Dow Jones News Service. The Company shall similarly cause a notice of a Successful Optional Remarketing to be provided in writing to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published before the open of business on the Business Day immediately following the date of such Successful Optional Remarketing.

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and the Company shall request the Depositary to notify its participants holding Separate Shares of Mandatory Convertible Preferred Stock, if any, of the modified terms established for the Mandatory Convertible Preferred Stock during the Optional Remarketing on the Business Day following the date on which the Mandatory Convertible Preferred Stock was successfully remarketed (and a copy of this request shall be provided to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent).

(b) Final Remarketing. (i) Unless a Termination Event or a Successful Optional Remarketing has occurred, in order to remarket the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock of any Holders of Corporate Units, the Company shall engage the Remarketing Agent(s), and the Company shall, and the Company shall cause the Remarketing Agent(s) pursuant to the terms of the Remarketing Agreement to, use its reasonable best efforts to remarket such Mandatory Convertible Preferred Stock, along with any Separate Shares of Mandatory Convertible Preferred Stock, the holders of which have elected to participate in the Final Remarketing pursuant to Section 5.02(d) below, during the Final Remarketing Period. For the avoidance of doubt, and without limiting the generality of the foregoing, the Company and its Board of Directors shall accept the terms of a Successful Final Remarketing if the Closing Price of the Common Stock at the time of any scheduled, proposed or purported Final Remarketing Date is above the Threshold Appreciation Price.

(ii) The Company shall substantially contemporaneously notify the Purchase Contract Agent and the Custodial Agent in writing, issue a press release, and request that the Depositary notify the Depositary Participants holding Corporate Units, Treasury Units and Separate Shares of Mandatory Convertible Preferred Stock of the Final Remarketing no later than October 20, 2023 (each, a “**Notice of a Final Remarketing**”) (and the Company shall also provide a copy of such notice to the Depositary to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent). In such notice, the Company shall set forth: the dates of the Final Remarketing Period; the applicable procedures for holders of Separate Shares of Mandatory Convertible Preferred Stock to participate in the Final Remarketing; the applicable procedures for Holders of Corporate Units to create Treasury Units or Cash Settled Units; the applicable procedures for Holders of Treasury Units to recreate Corporate Units; the applicable procedures for Holders of Corporate Units to effect Early Settlement with respect to their Purchase Contracts; that, following a Remarketing Failure, no shares of Common Stock will be delivered upon automatic conversion of the shares of the Mandatory Convertible Preferred Stock that remain outstanding following the Purchase Contract Settlement Date and each such share of Mandatory Convertible Preferred Stock will be automatically transferred to the Company on or around March 1, 2024 without any payment of cash or shares of Common Stock thereon; the applicable procedures for Holders of Treasury Units or Cash Settled Units to recreate Corporate Units following the Final Remarketing Period in the case of a Remarketing Failure in order for their Separate Shares of Mandatory Convertible Preferred Stock to be automatically delivered to the Company in satisfaction of such Holder’s obligations under the related Purchase Contracts, as described in Section 5.02(b)(viii) below; and any other applicable procedures, including the procedures that must be followed by a holder of Corporate Units in the case of an Unsuccessful Final Remarketing if such Holder wishes not to have the Mandatory Convertible Preferred Stock underlying its Applicable Ownership Interests in Mandatory Convertible Preferred Stock automatically delivered to the Company in satisfaction of such Holder’s obligations under the related Purchase Contracts, as described in Section 5.02(b)(viii) below.

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(iii) The Purchase Contract Agent, after receipt of and based on the notices specified in Section 5.02(a)(iii) (which shall be delivered similarly in respect of the Final Remarketing), shall notify the Remarketing Agent(s) in writing, promptly after 4:00 p.m., New York City time on the Business Day immediately preceding the first day of the Final Remarketing Period, of the aggregate number of shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are to be remarketed, and the Custodial Agent shall notify in writing the Remarketing Agent(s) of the aggregate number of Separate Shares of Mandatory Convertible Preferred Stock (if any) to be remarketed pursuant to Section 5.02(d) below. Pursuant to, and subject to the terms of, the Remarketing Agreement, upon receipt of such notices from the Purchase Contract Agent and the Custodial Agent, in each case, as set forth in this Section 5.02(b)(iii), the Remarketing Agent(s) will use its reasonable best efforts to remarket such shares of Mandatory Convertible Preferred Stock. The Company shall use commercially reasonable efforts to cooperate with the Purchase Contract Agent in connection with the Final Remarketing and shall notify the Purchase Contract Agent in writing promptly upon becoming aware of the expected Remarketing Date in connection with the Final Remarketing.

(iv) The Company may postpone the Final Remarketing in its absolute discretion on any day prior to the last Business Day of the Final Remarketing Period. The Company will promptly furnish notice of any such postponement to the Purchase Contract Agent and the Depository and shall request that the Depository notify the Depository Participants holding Corporate Units, Treasury Units and Separate Shares of Mandatory Convertible Preferred Stock

(v) If the Remarketing Agent(s) is able to remarket such Mandatory Convertible Preferred Stock and the Separate Shares of Mandatory Convertible Preferred Stock (if any) for at least the applicable Remarketing Price in any Final Remarketing in accordance with the Remarketing Agreement (a “**Successful Final Remarketing**”), the Company shall notify the Collateral Agent and the Custodial Agent in writing thereof, and the Collateral Agent shall, upon receipt of such written instructions from the Company, cause the Securities Intermediary to Transfer to the Remarketing Agent(s) the remarketed Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock upon confirmation of deposit to the Collateral Account of proceeds of such Successful Final Remarketing attributable to such Mandatory Convertible Preferred Stock, and the Custodial Agent shall Transfer the remarketed Separate Shares of Mandatory Convertible Preferred Stock to the Remarketing Agent(s) upon confirmation of deposit into the Separate Account of proceeds of such Successful Final Remarketing attributable to such Separate Shares of Mandatory Convertible Preferred Stock. Settlement shall occur on the Remarketing

Settlement Date. Upon deposit in the Collateral Account of such proceeds attributable to the remarked Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Collateral Agent shall, on the Purchase Contract Settlement Date, in consultation with the Purchase Contract Agent and upon the written direction of the Company, instruct the Securities Intermediary to remit to the Company a portion of such proceeds equal to \$1,000 *multiplied by* the aggregate number of such shares of Mandatory Convertible Preferred Stock to satisfy in full the Obligations of Holders of the related Corporate Units to pay the Purchase Price for the shares of Common Stock under the related Purchase Contracts, and promptly remit the balance of such proceeds to the Purchase Contract Agent for payment to the Holders of Corporate Units whose Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock were remarketed, whereupon the Purchase Contract Agent shall make such payment on the Remarketing Settlement Date to such Holders *pro rata* in accordance with their respective interests. With respect to any Separate Shares of Mandatory Convertible Preferred Stock remarketed, upon receipt of proceeds attributable to the remarketed Separate Shares of Mandatory Convertible Preferred Stock, the Custodial Agent shall remit such proceeds of the Successful Final Remarketing received from the Remarketing Agent(s) *pro rata* to holders of such Separate Shares of Mandatory Convertible Preferred Stock on the Remarketing Settlement Date in accordance with the instructions provided by such holders in the form of Exhibit M.

(vi) Following the occurrence of a Successful Final Remarketing where the Remarketing Settlement Date occurs prior to the Purchase Contract Settlement Date, a portion of the proceeds from the Successful Final Remarketing equal to \$1,000 *multiplied by* the aggregate number of shares of Mandatory Convertible Preferred Stock underlying Corporate Units that were remarketed will be substituted as Collateral for the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock and will be held by the Collateral Agent in accordance with the terms hereof to secure the Obligation of each Holder of Corporate Units, and the Holders of Corporate Units and the Collateral Agent shall have such respective rights, obligations and security interests with respect to such Cash as the Holder of Corporate Units and the Collateral Agent had in respect of the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, subject to the Pledge thereof. Any reference in this Agreement or the Certificates to the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall thereupon be deemed to be a reference to such amount of Cash. The Company may cause to be made in any Corporate Units Certificates thereafter to be issued such change in phraseology and form (but not in substance) as may be appropriate to reflect the substitution of such Cash for the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock as Collateral. Neither the Company, the Purchase Contract Agent, the Custodial Agent, the Securities Intermediary nor anyone else shall be required to invest the portion of such Cash pledged to the Company. The remaining proceeds from the Successful Remarketing of such shares of Mandatory Convertible Preferred Stock underlying Corporate Units that were remarketed shall be remitted to the Collateral Agent for distribution *pro rata* to such Holders in accordance with their respective interests pursuant to instructions provided by the Remarketing Agent to the Collateral Agent.

(vii) Following a Successful Final Remarketing, the Remarketing Agent(s) shall remit (1) the proceeds attributable to the remarketed Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock to the Collateral Agent and (2) the proceeds attributable to the remarketed Separate Shares of Mandatory Convertible Preferred Stock to the Custodial Agent for the benefit of the holders of Separate Shares of Mandatory Convertible Preferred Stock that had their Mandatory Convertible Preferred Stock remarketed.

(viii) If, (1) in spite of its reasonable best efforts, the Remarketing Agent(s) cannot remarket the Mandatory Convertible Preferred Stock during the Final Remarketing Period at a price equal to or greater than the applicable Remarketing Price or (2) the Final Remarketing has not occurred on or prior to the last day of the Final Remarketing Period, or the Remarketing Settlement Date has not occurred as set forth in the Remarketing Agreement, because a condition precedent set forth in the Remarketing Agreement is not fulfilled or otherwise, the Remarketing will be deemed to have been unsuccessful (an “**Unsuccessful Final Remarketing**”). The Company shall cause a notice of the Unsuccessful Final Remarketing to be provided in writing to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published before the open of business on the Business Day immediately following the last date of the Final Remarketing Period. This notice shall be validly published by making a timely release to any appropriate news agency, including, without limitation, Bloomberg Business News and the Dow Jones News Service. The Company shall similarly cause a notice of a Successful Final Remarketing to be provided in writing to the Custodial Agent, the Collateral Agent and the Purchase Contract Agent and to be published before the open of business on the Business Day immediately following the date of such Successful Final Remarketing.

Following an Unsuccessful Final Remarketing, on December 1, 2023, (A) the Company shall pay each Holder all accrued and unpaid Contract Adjustment Payments to, but excluding, the December 1, 2023 Contract Adjustment Payment Date, and (B) immediately following such payments (to the extent applicable), as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, unless such Holder has (I) provided written notice to the Purchase Contract Agent in substantially the form of Exhibit P hereto prior to 4:00 p.m. (New York City time) on the second Business Day immediately preceding the Purchase Contract Settlement Date of its intention to settle the related Purchase Contract with separate cash, whereupon the Purchase Contract Agent shall provide the Company with a copy of the instruction from the Holder to the Purchase Contract Agent in the form of Exhibit P and upon written confirmation from the Company (which shall be provided promptly upon receipt of such instruction) that the amounts and calculations made by such Holder in such instruction are correct, shall promptly provide a direction and instruction to the Collateral Agent in writing, substantially in the form of Exhibit Q hereto, (II) surrendered the Certificate evidencing the Corporate Units (if they are in certificated form) or the related Book-Entry Interests, to the Purchase Contract Agent prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the Purchase Contract Settlement Date and (III) on or prior to the Business Day immediately preceding the Purchase Contract Settlement Date delivered the Purchase Price in Cash to the Securities Intermediary for deposit to the Collateral



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Account by certified or cashier's check or wire transfer in immediately available funds payable to or upon the order of the Securities Intermediary (which settlement may only be effected in integral multiples of 10 Corporate Units), shall be deemed to have automatically delivered the shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock in full satisfaction of such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts. Following such automatic delivery, each such Holder's Obligations, including to pay the Purchase Price for the shares of Common Stock, will be deemed to be satisfied in full, and the Collateral Agent shall, upon receipt of written instructions from the Company, cause the Securities Intermediary to release the Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock from the Collateral Account and shall promptly transfer such shares of Mandatory Convertible Preferred Stock to the Company.

Upon (x) receipt by the Collateral Agent of the direction and instruction from the Purchase Contract Agent in substantially the form of Exhibit Q hereto promptly after the receipt by the Purchase Contract Agent of a notice from a Holder of Corporate Units that such Holders have elected, in accordance with the first sentence of the immediately preceding paragraph, to settle the related Purchase Contract with separate cash, and (y) payment by such Holder to the Securities Intermediary of the Purchase Price in accordance with the first sentence of the immediately preceding paragraph, in lieu of the automatic delivery described in such sentence, the Securities Intermediary shall give the Purchase Contract Agent and the Collateral Agent notice of the receipt of such payment in substantially the form of Exhibit R hereto and the Collateral Agent shall, and is hereby authorized to, or to cause the Securities Intermediary to (X) deposit the separate cash received from such Holder to the Collateral Account and, if the Company so requests and the Collateral Agent and Securities Intermediary consent thereto, invest such separate cash received in Permitted Investments, (Y) promptly release from the Pledge the Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock related to the Corporate Units as to which such Holder has paid such separate cash and (Z) promptly Transfer all such shares of Mandatory Convertible Preferred Stock to the Purchase Contract Agent for distribution to such Holder as instructed by such Holder to the Purchase Contract Agent in accordance with the terms provided for herein, in each case, free and clear of the Pledge created hereby, whereupon the Purchase Contract Agent shall Transfer such shares of Mandatory Convertible Preferred Stock in accordance with written instructions provided by the Holder thereof or, if no such instructions are given to the Purchase Contract Agent by the Holder, the Purchase Contract Agent shall hold such shares of Mandatory Convertible Preferred Stock in the name of the Purchase Contract Agent or its nominee in trust for the benefit of such Holder until the expiration of the time period specified in the relevant abandoned property laws of the state where such shares of Mandatory Convertible Preferred Stock are held, after which time such shares of Mandatory Convertible Preferred Stock shall be delivered to the Company on request of the Company contained in an Officer's Certificate. On the Purchase Contract Settlement Date, the Collateral Agent shall, and is hereby authorized to, (A) instruct the Securities Intermediary to remit to the Company the separate cash amount or such portion of the proceeds of such Permitted Investments as is equal to the aggregate Purchase Price under all Purchase Contracts in respect of which separate cash has been paid as provided in this Section 5.02(b)(viii), as the case may be, to the Company, and (B) release any amounts in excess of the aggregate Purchase Price to the Purchase Contract Agent for distribution to the Holders who have paid such separate cash *pro rata* in proportion to the amount paid by such Holders under this Section 5.02(b)(viii), as adjusted to reflect the period of time that each such Holder's cash was invested in such Permitted Investments.

Following an Unsuccessful Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of Treasury Units shall be deemed to have elected to apply a portion of the Cash constituting such Holder's Pro Rata Portions of the Treasury Unit Collateral equal to the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts to satisfy such Holder's obligation to pay such aggregate Purchase Price in full satisfaction of such Holder's Obligations under such Purchase Contracts. Following such application, each such Holder's Obligations, including to pay the Purchase Price for the shares of Common Stock, will be deemed to be satisfied in full, and the Collateral Agent shall, upon receipt of written instructions from the Company, cause the Securities Intermediary to release such Cash from the Collateral Account and shall promptly transfer such Cash to the Company. Thereafter, (i) the Collateral Agent shall promptly remit the remaining Cash constituting the Holder's Pro Rata Portions of the Treasury Unit Collateral in excess of the aggregate Purchase Price for the shares of Common Stock to be issued under such Purchase Contracts to the Purchase Contract Agent for payment to the Holder of the Treasury Units to which such Pro Rata Portions of the Treasury Unit Collateral relate and (ii) the Company shall notify the Depository and provide written instructions to the Depository for announcement and distribution of such excess payments to the applicable Depository Participants (with a copy of such notice and instruction to the Purchase Contract Agent).

Following an Unsuccessful Final Remarketing, as of the Purchase Contract Settlement Date, each Holder of Cash Settled Units shall be deemed to have elected to apply the Cash component of such Holder's Cash Settled Units to satisfy such Holder's obligation to pay the aggregate Purchase Price for the shares of Common Stock to be issued under the related Purchase Contracts in full satisfaction of such Holder's Obligations under such Purchase Contracts. Following such application, each such Holder's Obligations, including to pay the Purchase Price for the shares of Common Stock, will be deemed to be satisfied in full, and the Collateral Agent shall, upon receipt of written instructions from the Company, cause the Securities Intermediary to release such Cash from the Collateral Account and shall promptly transfer such Cash to the Company.

(c) In connection with an Optional Remarketing or the Final Remarketing, the Dividend Rate (as such term is defined in the Certificate of Designations) on all shares of Mandatory Convertible Preferred Stock (whether or not remarketed) may be increased by the Company to the Increased Dividend Rate and dividends thereafter shall be payable on March 1, 2024 (or, at the Company's election in consultation with the Remarketing Agent(s) in connection with a Successful Optional Remarketing, on each of December 1, 2023 and March 1, 2024) when, as and if declared by the Board of Directors. In addition, pursuant to the terms of the Certificate of Designations, the Minimum Conversion Rate on all shares of Mandatory Convertible Preferred Stock (whether or not remarketed) shall be increased by the Company to the Increased Minimum Conversion Rate if the Closing Price on the pricing date of a Successful Remarketing is less than or equal to the Initial Price. The Increased Rates shall be fixed rates, subject to adjustment as set forth in this Agreement and the Certificate of Designations, determined by the Board of Directors after consultation with the Remarketing Agents, as the

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rate(s) the Mandatory Convertible Preferred Stock should bear and the terms the Mandatory Convertible Preferred Stock should include in order for the proceeds in connection with such Remarketing to equal (A) in the case of a Final Remarketing, at least \$1,000 *multiplied by* the number of shares of Mandatory Convertible Preferred Stock being remarketed and (B) in the case of an Optional Remarketing, at least the sum of (1) 100% of the Treasury Portfolio Purchase Price and (2) the Separate Shares Purchase Price. Notwithstanding the foregoing, in no event shall the Increased Minimum Conversion Rate exceed the Maximum Conversion Rate. Neither the Minimum Conversion Rate nor the Dividend Rate (as such term is defined in the Certificate of Designations) shall be decreased, nor the Maximum Conversion Rate changed, in connection with a Successful Remarketing. These modifications shall become effective if the Remarketing is successful, without the consent of the Holders, upon the Remarketing Settlement Date. If a Successful Remarketing occurs, the Company will request the Depository to notify the Depository Participants holding shares of Mandatory Convertible Preferred Stock of any Increased Rate and Dividend Payment Date (if applicable) for the Mandatory Convertible Preferred Stock on the Business Day following the date of the Successful Remarketing.

(d) Prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding an Applicable Remarketing Period, other than during a Blackout Period, holders of Separate Shares of Mandatory Convertible Preferred Stock may elect to have their Separate Shares of Mandatory Convertible Preferred Stock remarketed in such Remarketing in the same manner as the Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock by delivering their Separate Shares of Mandatory Convertible Preferred Stock along with a notice of this election, substantially in the form of Exhibit M attached hereto, to the Custodial Agent. After such time, such election shall become an irrevocable election to have such Separate Shares of Mandatory Convertible Preferred Stock remarketed in all Remarketings to occur in the Applicable Remarketing Period. The Custodial Agent shall hold the Separate Shares of Mandatory Convertible Preferred Stock in an account separate from the collateral account in which the Mandatory Convertible Preferred Stock underlying Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall be held. Holders electing to have their Separate Shares of Mandatory Convertible Preferred Stock remarketed shall also have the right to withdraw the election by written notice to the Collateral Agent, substantially in the form of Exhibit N hereto, at any time prior to 4:00 p.m., New York City time, on the second Business Day immediately preceding the first day of the Applicable Remarketing Period. In the event of a Successful Remarketing, proceeds from the Remarketing attributable to holders of Separate Shares of Mandatory Convertible Preferred Stock that elected to have their Mandatory Convertible Preferred Stock remarketed (which shall be, for the avoidance of doubt, an amount per share of such Mandatory Convertible Preferred Stock greater than or equal to the applicable Remarketing Price Per Share or \$1,000, as the case may be) shall be remitted by the Remarketing Agent(s) for the benefit of such holders on the applicable Remarketing Settlement Date.

(e) For the avoidance of doubt, the right of each holder of the Mandatory Convertible Preferred Stock underlying the aggregate Applicable Ownership Interests in Mandatory Convertible Preferred Stock that are components of Corporate Units and the Separate Shares of Mandatory Convertible Preferred Stock, the holders of which have elected to participate in any Remarketing, to have such Mandatory Convertible Preferred Stock remarketed and sold on any Remarketing Date shall be subject to the conditions that (i)(1) the Remarketing

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Agent(s) conducts an Optional Remarketing, or (2) in the case of the Final Remarketing, that no Successful Optional Remarketing has occurred, each pursuant to the terms of this Agreement, (ii) a Termination Event has not occurred prior to such Remarketing Date, (iii) the Remarketing Agent(s) is able to find a purchaser or purchasers for such Mandatory Convertible Preferred Stock at or above the applicable Remarketing Price or more based on the Increased Rates, if any, and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent(s) as and when required.

(f) The Company agrees to use its commercially reasonable efforts to ensure that, if required by applicable law, a Registration Statement, including a prospectus, under the Securities Act with regard to the full amount of the Mandatory Convertible Preferred Stock to be remarketed in each Remarketing in each case shall be effective with the Securities and Exchange Commission in a form that may be used by the Remarketing Agent(s) in connection with such Remarketing (unless such registration statement is not required under the applicable laws and regulations that are in effect at that time or unless the Company conducts any Remarketing in accordance with an exemption under the securities laws).

(g) Holders whose shares of Mandatory Convertible Preferred Stock are remarketed will not be responsible for the payment of any Remarketing Fee.

(h) In the case of a Treasury Unit or a Corporate Unit (if Applicable Ownership Interests in the Treasury Portfolio have replaced the Applicable Ownership Interests in Mandatory Convertible Preferred Stock as a component of such Corporate Unit), if the Pledged Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio held by the Securities Intermediary mature prior to the Purchase Contract Settlement Date, the principal amount of the Treasury Securities or the appropriate Pledged Applicable Ownership Interests in the Treasury Portfolio received by the Securities Intermediary shall be placed in the Collateral Account. On the Purchase Contract Settlement Date, an amount equal to the Purchase Price for all related Purchase Contracts shall be remitted to the Company as payment of such Holder's Obligations under such Purchase Contracts without receiving any instructions from the Holder. In the event the sum of the Proceeds from the related Pledged Treasury Securities or the related Pledged Applicable Ownership Interests in the Treasury Portfolio is in excess of the aggregate Purchase Price, (i) the Collateral Agent shall cause the Securities Intermediary to distribute such excess, when received by the Securities Intermediary, to the Purchase Contract Agent for the benefit of the Holder of the related Treasury Units or Corporate Units, as applicable and (ii) the Company shall notify the Depository and provide written instructions to the Depository for announcement and distribution of such excess payments to the applicable Depository Participants (with a copy of such notice and instruction to the Purchase Contract Agent).

(i) The obligations of the Holders to pay the Purchase Price are non-recourse obligations and, except to the extent satisfied by Early Settlement, Fundamental Change Early Settlement or settlement with separate cash pursuant to Section 5.02(b)(viii) or terminated upon a Termination Event, are payable solely out of the proceeds of any Collateral pledged to secure the obligations of the Holders, and in no event will Holders be liable for any deficiency between the proceeds of the disposition of Collateral and the Purchase Price.

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(j) The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates thereof to the Holder of the related Units unless the Company shall have received, subject to Section 5.02(i), payment for the Common Stock to be purchased thereunder in the manner herein set forth.

Section 5.03. Issuance of Shares of Common Stock. Unless a Termination Event, an Early Settlement or a Fundamental Change Early Settlement shall have occurred, on the Purchase Contract Settlement Date, upon the Company's receipt of the aggregate Purchase Price payable on all Outstanding Units in accordance with Section 5.02, the Company shall issue and deposit with the Purchase Contract Agent, for the benefit of the Holders of the Outstanding Units, one or more certificates representing newly-issued shares of Common Stock registered in the name of the Purchase Contract Agent (or its nominee) as custodian for the Holders to which the Holders are entitled hereunder; *provided*, that, in case such Common Stock is to be delivered through the facilities of DTC or another Depository, the Company shall cause the transfer agent for the Common Stock to deliver beneficial interests in such Common Stock on behalf of the Purchase Contract Agent through such facilities to the Holders entitled thereto.

Subject to the foregoing, following book-entry transfer of a Unit or upon presentation and surrender of a Certificate, if in certificated form, to the Purchase Contract Agent on or after the Purchase Contract Settlement Date, Early Settlement Date or the Fundamental Change Early Settlement Date, as the case may be, together with settlement instructions thereon duly completed and executed, the Holder of the relevant Unit shall on the applicable settlement date (or, if later, the date of such book-entry transfer of the Unit or such surrender of the Certificate shall be entitled to receive forthwith in exchange therefor book-entry transfer of beneficial interests in, or a certificate representing that number of newly-issued whole shares of Common Stock which such Holder is entitled to receive pursuant to the provisions of this Article 5 (after taking into account all Units then held by such Holder), together with cash in lieu of fractional shares as provided in Section 5.07 and, in the case of a settlement on the Purchase Contract Settlement Date, any dividends or distributions with respect to such shares of Common Stock for which a record date and payment date occurred on or after the Purchase Contract Settlement Date, and the number of Units represented by the Global Certificate shall be appropriately reduced in accordance with Applicable Procedures and standing arrangements between the Depository and the Purchase Contract Agent or the Company, or the Certificate so surrendered shall forthwith be cancelled, as the case may be. Such shares shall be registered in the name of, or book-entry interests therein shall be transferred to, the Holder or the Holder's designee as specified in the settlement instructions set forth on the reverse of the Certificate provided by the Holder to the Purchase Contract Agent. If any shares of Common Stock issued in respect of a Purchase Contract are to be registered in the name of, or beneficial interests therein are transferred to, a Person other than the Person in whose name the Certificate evidencing such Purchase Contract is registered (but excluding any Depository or nominee thereof) or the beneficial owner, no such registration or transfer shall be made unless and until the Person requesting such registration or transfer has paid the Company the amount of any transfer and other taxes (including any applicable stamp taxes) required by reason of such registration in a name other than that of, or transfer to a Person other than, the registered Holder of the Certificate evidencing such Purchase Contract or beneficial owner thereof or has established to the satisfaction of the Company that such tax either has been paid or is not payable.

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Section 5.04. Fundamental Change Early Settlement.

(a) If a Fundamental Change occurs prior to the Purchase Contract Settlement Date, then, following the occurrence of a Fundamental Change, each Holder of a Unit, subject to the conditions described in this Section 5.04, shall have the right (a “**Fundamental Change Early Settlement Right**”) to settle (a “**Fundamental Change Early Settlement**”) its Purchase Contract early on the Fundamental Change Early Settlement Date at the Settlement Rate determined as if the Applicable Market Value equaled the Stock Price, *plus* an additional number of shares of Common Stock (such additional number, the “**Make-Whole Shares**”), subject to adjustment under Section 5.11, and receive payment of Cash in lieu of any fraction of a share, as provided in Section 5.07; *provided* that no Fundamental Change Early Settlement will be permitted pursuant to this Section 5.04(a) unless, at the time such Fundamental Change Early Settlement is effected, there is an effective Registration Statement with respect to any shares of Common Stock to be issued and delivered in connection with such Fundamental Change Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, the Company covenants and agrees to use its commercially reasonable efforts to (x) have in effect a Registration Statement covering the Common Stock and other securities, if any, to be delivered in respect of the Purchase Contracts being settled and (y) provide a Prospectus in connection therewith, in each case in a form that may be used in connection with such Fundamental Change Early Settlement (it being understood that if there is a material business transaction or development that has not yet been publicly disclosed, the Company will not be required to provide such a Prospectus, and the right to effect Fundamental Change Early Settlement will not be available, until the Company has publicly disclosed such transaction or development, *provided* that the Company will use its commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so).

In the event that a Holder seeks to exercise its Fundamental Change Early Settlement Right and a Registration Statement is required to be effective in connection with the exercise of such right but no such Registration Statement is then effective, the Holder’s exercise of such right shall be void unless and until such a Registration Statement shall be effective, but such Holder shall receive consideration calculated as described in this Section 5.04(a) when such Registration Statement becomes effective; *provided* that the Fundamental Change Early Settlement Date shall not be so postponed beyond the Purchase Contract Settlement Date. If, but for the *proviso* in the immediately preceding sentence, the Fundamental Change Early Settlement Date would occur on or after the Purchase Contract Settlement Date, the Company shall deliver to any Holder on the Purchase Contract Settlement Date the applicable number of Make-Whole Shares in addition to a number of shares of Common Stock equal to the Settlement Rate, determined as if the Applicable Market Value were equal to the Stock Price.

If a Holder elects a Fundamental Change Early Settlement of some or all of its Purchase Contracts, such Holder shall be entitled to receive, on the Fundamental Change Early Settlement Date, the aggregate amount of any accrued and unpaid Contract Adjustment Payments (including deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon), with respect to such Purchase Contracts to, but excluding, the Fundamental Change Settlement Date (except when the Fundamental Change Early Settlement Date falls after any Record Date and prior to the next succeeding Contract Adjustment Payment Date, in which case

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Contract Adjustment Payments shall be payable to the Person in whose name a Certificate is registered at the close of business on such Record Date relating to the next succeeding Contract Adjustment Payment Date), payable in the manner set forth in Section 5.09(e)(i). The Company shall pay such amount as a credit against the amount otherwise payable by such Holder to effect such Fundamental Change Early Settlement.

The Company shall provide each Holder and the Purchase Contract Agent with written notice of a Fundamental Change as soon as practicable after becoming aware of the occurrence of such Fundamental Change but in any after no later than five Business Days after the Effective Date of such Fundamental Change, which shall specify:

- (i) the date on which such Fundamental Change Early Settlement shall occur (such date, the “**Fundamental Change Early Settlement Date**”) which shall be at least 10 Business Days after the Effective Date of such Fundamental Change but, subject to the foregoing, no later than the earlier of (x) 20 Business Days after the Effective Date of such Fundamental Change and (y) one Business Day prior to (i) the first day of the commencement of an Optional Remarketing Period, or (ii) if the Company has not specified an Optional Remarketing Period or the Optional Remarketing is not successful, the first day of the commencement of the Final Remarketing Period or, if the Final Remarketing is not successful, the Purchase Contract Settlement Date;
- (ii) the date by which Holders must exercise the Fundamental Change Early Settlement Right;
- (iii) the applicable Settlement Rate and number of Make-Whole Shares;
- (iv) the amount and kind (per share of Common Stock) of the Cash, securities and other consideration receivable by the Holder upon Fundamental Change Early Settlement; and
- (v) the amount of accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon), if any, that will be paid upon settlement to Holders exercising the Fundamental Change Early Settlement Right and the method by which the Company will pay such Contract Adjustment Payments.

Notwithstanding the foregoing, if the Final Remarketing Period begins less than ten Business Days following the occurrence of a Fundamental Change, the notice will specify the Purchase Contract Settlement Date as the Fundamental Change Early Settlement Date.

Corporate Units Holders and Treasury Units Holders may only effect Fundamental Change Early Settlement pursuant to this Section 5.04(a) in integral multiples of 10 Corporate Units or Treasury Units, as the case may be. Other than the provisions relating to timing of notice and settlement, which shall be as set forth above, the provisions of Section 5.01(a) shall apply with respect to a Fundamental Change Early Settlement pursuant to this Section 5.04(a).

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In order to exercise the right to effect a Fundamental Change Early Settlement with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units shall deliver to the Purchase Contract Agent at the Corporate Trust Office, during the period beginning on the date the Company delivers written notice that a Fundamental Change has occurred and ending at 4:00 p.m., New York City time, on the second Business Day immediately preceding the Fundamental Change Early Settlement Date, such Certificate evidencing its Corporate Units or Treasury Units if they are held in certificated form, duly endorsed for transfer to the Company or in blank with the form of Election to Settle Early on the reverse thereof duly completed and accompanied by payment (payable to the Company in immediately available funds) in an amount equal to the aggregate Purchase Price corresponding to the number of Purchase Contracts with respect to which the Holder has elected to effect Fundamental Change Early Settlement. In the event that Units are held by or through DTC or another Depository, the exercise of the right to effect Fundamental Change Early Settlement shall occur in conformity with the Applicable Procedures and the standing arrangements between DTC or such Depository and the Purchase Contract Agent or the Company.

Upon receipt of such Certificate and payment of such funds, the Purchase Contract Agent shall pay the Company from such funds the related Purchase Price pursuant to the terms of the related Purchase Contracts, the Company shall promptly notify the Purchase Contract Agent in writing of its receipt of the related Purchase Price, and upon receipt of such written confirmation, the Purchase Contract Agent shall then provide to the Collateral Agent a notice in writing, substantially in the form of Exhibit O hereto, that all the conditions necessary for a Fundamental Change Early Settlement by such Holder have been satisfied pursuant to which the Purchase Contract Agent has received from such Holder, and paid to the Company as confirmed in writing by the Company, the related Purchase Price.

Upon receipt by the Collateral Agent of the written notice from the Purchase Contract Agent set forth in the immediately preceding paragraph, the Collateral Agent shall release from the Pledge, (1) the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Pledged Applicable Ownership Interests in the Treasury Portfolio or (2) the applicable Treasury Securities corresponding to the number of Purchase Contracts as to which such Holder of Treasury Units has elected to effect a Fundamental Change Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the Treasury Portfolio or Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or applicable Proceeds of the Treasury Securities, as the case may be, to the Purchase Contract Agent or Transfer Agent, as applicable, for distribution to such Holder in accordance with the terms provided for herein, in each case free and clear of the Pledge created hereby.

If a Holder properly effects an effective Fundamental Change Early Settlement in accordance with the provisions of this Section 5.04(a), the Company will deliver (or will cause and instruct the Purchase Contract Agent in writing to deliver) to the Holder on the Fundamental Change Early Settlement Date for each Purchase Contract with respect to which such Holder has elected Fundamental Change Early Settlement:

- (i) a number of shares of Common Stock (or Exchange Property Units, if applicable) equal to the Settlement Rate determined as if the Applicable Market Value equaled the Stock Price *plus* the Make-Whole Shares, if any;



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(ii) the shares of Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio or applicable Proceeds of the Treasury Securities underlying the Corporate Units or Treasury Units, as the case may be, with respect to which the Holder is effecting a Fundamental Change Early Settlement, free and clear of the Pledge created hereby; and

(iii) if so required under the Securities Act, a Prospectus as contemplated by this Section 5.04(a).

For the avoidance of doubt, any accrued and unpaid Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) with respect to such Purchase Contract to, but excluding, the Fundamental Change Early Settlement Date shall be due and payable by the Company on the Fundamental Change Early Settlement Date for such Purchase Contract, subject to Section 5.09(e)(i).

The Corporate Units or the Treasury Units of the Holders who do not elect Fundamental Change Early Settlement in accordance with the foregoing will continue to remain outstanding and be subject to settlement on the Purchase Contract Settlement Date in accordance with the terms hereof. In the event that Fundamental Change Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Fundamental Change Early Settlement, the Company shall execute and upon receipt of an Issuer Order, the Purchase Contract Agent shall execute on behalf of the Holder as its attorney-in-fact, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Fundamental Change Early Settlement was not effected.

(b) The number of Make-Whole Shares per Purchase Contract deliverable upon a Fundamental Change Early Settlement shall be calculated by the Company and shall be determined by reference to the table below, based on the date on which the Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the Stock Price in the such Fundamental Change. The “**Stock Price**” shall be:

(i) in the case of a Fundamental Change described in clause (ii) of the definition thereof where the holders of the Common Stock receive only Cash in the Fundamental Change, the Cash amount paid per share of the Common Stock; and

(ii) in all other cases, the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Days immediately prior to but not including the Effective Date.

The Stock Prices set forth in the first row of the table (i.e., the column headers) shall be adjusted upon the occurrence of any event requiring an anti-dilution adjustment to the Maximum Settlement Rate pursuant to Section 5.11 in a manner inversely proportional to the adjustments to the Maximum Settlement Rate. Each of the Make-Whole Share amounts in the table will be subject to adjustment in the same manner and at the same time as the Maximum Settlement Rate as set forth in Section 5.11.

**Stock Price**

<b>Effective Date</b>	<b>\$10.00</b>	<b>\$12.00</b>	<b>\$14.00</b>	<b>\$16.00</b>	<b>\$18.00</b>	<b>\$24.51</b>	<b>\$27.50</b>	<b>\$28.80</b>	<b>\$35.00</b>	<b>\$40.00</b>	<b>\$45.00</b>	<b>\$55.00</b>	<b>\$60.00</b>
April 19, 2021	1.0043	0.8289	0.6948	0.5789	0.4695	0.0000	0.4537	0.5697	0.3978	0.3133	0.2588	0.1955	0.1753
December 1, 2021	0.7955	0.6575	0.5524	0.4600	0.3682	0.0000	0.3720	0.4880	0.3214	0.2462	0.2012	0.1524	0.1371
December 1, 2022	0.3904	0.3235	0.2746	0.2325	0.1850	0.0000	0.2202	0.3307	0.1684	0.1174	0.0951	0.0739	0.0670
December 1, 2023	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The actual Stock Price and Effective Date applicable to a Fundamental Change may not be set forth on the table, in which case:

- (i) if the actual Stock Price is between two Stock Prices on the table or the actual Effective Date is between two Effective Dates on the table, the amount of Make-Whole Shares shall be determined by a straight-line interpolation between the Make-Whole Share amounts set forth for the two Stock Prices and the two Effective Dates on the table based on a 365-day year, as applicable;
- (ii) if the Stock Price exceeds \$60.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above), then the Make-Whole Share amount shall be zero; and
- (iii) if the Stock Price is less than \$10.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above) (the “**Minimum Stock Price**”), then the Make-Whole Share amount shall be determined as if the Stock Price equaled the Minimum Stock Price, using straight-line interpolation, as described above, if the actual Effective Date is between two Effective Dates on the table.

Notwithstanding the foregoing, in no event will the total number of shares of Common Stock issuable upon settlement of a Purchase Contract exceed 5.0843 shares per Purchase Contract (subject to adjustment in the same manner and at the same time as the Maximum Settlement Rate as set forth in [Section 5.11](#)).

(c) All calculations and determinations pursuant to this [Article 5](#) shall be made by the Company or its agent in good faith, and the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall have no responsibility for making, verifying or confirming such calculations or determinations or otherwise with respect to such calculations or determinations under this Agreement or otherwise, and may conclusively presume that such calculations and determinations are correct and conform to the requirements of this Agreement.

**Section 5.05. Termination Event; Notice.** The Purchase Contracts and all obligations and rights of the Company and the Holders thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon), and the rights and obligations of Holders to purchase Common Stock, shall immediately and automatically terminate, without the necessity of any notice or action by any Holder, the Purchase Contract Agent or the Company, if, prior to or on the Purchase Contract Settlement Date, a Termination Event shall have occurred.

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Upon and after the occurrence of a Termination Event, the Units shall thereafter represent the right to receive the shares of Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Treasury Securities, the Cash or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, forming part of such Units, and any other Collateral, in each case, in accordance with the provisions of Section 3.16(a) hereof. Upon the occurrence of a Termination Event, (i) the Company shall promptly but in no event later than two Business Days thereafter give written notice to the Purchase Contract Agent, the Collateral Agent and the Holders, at their addresses as they appear in the Security Register and (ii) the Collateral Agent shall, in accordance with Section 3.16(a) hereof, and the instructions provided for in the aforementioned notice from the Company, release the shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio forming a part of each Corporate Unit, the Pro Rata Portion of the Treasury Unit Collateral forming a part of each Treasury Unit or the Cash forming a part of each Cash Settled Unit, as the case may be, and any other Collateral from the Pledge.

Section 5.06. Early Settlement. (a) Subject to and upon compliance with the provisions of this Section 5.06(a), at the option of the Holder thereof, at any time prior to 4:00 p.m., New York City Time, on the Scheduled Trading Day immediately preceding the first day of the Market Value Averaging Period, other than during a Blackout Period, Purchase Contracts underlying Units may be settled early ("**Early Settlement**"); *provided* that no Early Settlement will be permitted pursuant to this Section 5.06(a) unless, at the time such Early Settlement is effected, there is an effective Registration Statement with respect to the shares of Common Stock and other securities, if any, to be issued and delivered in connection with such Early Settlement, if such a Registration Statement is required (in the view of counsel, which need not be in the form of a written opinion, for the Company) under the Securities Act. If such a Registration Statement is so required, the Company (A) shall, promptly after the date on which the Company is notified by the Purchase Contract Agent that the Holder has attempted an Early Settlement, so notify such Holder, and (B) covenants and agrees to use its commercially reasonable efforts to (i) have in effect a Registration Statement covering those shares of Common Stock and other securities, if any, to be delivered in respect of the Purchase Contracts being settled and (ii) provide a Prospectus in connection therewith, in each case in a form that may be used in connection with such Early Settlement (it being understood that if there is a material business transaction or development that has not yet been publicly disclosed, the Company will not be required to provide such a Prospectus, and the right to effect Early Settlement will not be available, until the Company has publicly disclosed such transaction or development, *provided* that the Company will use its commercially reasonable efforts to make such disclosure as soon as it is commercially reasonable to do so).

(b) In order to exercise the right to effect Early Settlement with respect to any Purchase Contracts, the Holder of the Certificate evidencing Units (in the case of Certificates in definitive certificated form) shall deliver, at any time prior to 4:00 p.m., New York City time, on the Scheduled Trading Day immediately preceding the first day of the Market Value Averaging Period, other than during a Blackout Period, such Certificate to the Purchase Contract Agent at

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the Corporate Trust Office duly endorsed for transfer to the Company or in blank with the form of Election to Settle Early on the reverse thereof duly completed and accompanied by payment (payable to the Company in Cash in immediately available funds) in an amount (the “**Early Settlement Amount**”) equal to the sum of:

(i) the aggregate Purchase Price for the number of Purchase Contracts with respect to which the Holder has elected to effect Early Settlement, *plus*,

(ii) if the Early Settlement Date with respect to any Purchase Contracts occurs during the period from the close of business on any Record Date to the open of business on the related Contract Adjustment Payment Date, an amount equal to the Contract Adjustment Payments payable on such Contract Adjustment Payment Date with respect to such Purchase Contracts, unless the Company has elected to defer the Contract Adjustment Payments which would otherwise be payable on such Contract Adjustment Payment Date.

In the case of Book-Entry Interests, each Beneficial Owner electing Early Settlement must deliver the Early Settlement Amount to the Purchase Contract Agent along with a facsimile of the Election to Settle Early form duly completed, make book-entry transfer of such Book-Entry Interests and comply with the applicable procedures of the Depositary by the applicable time set forth above in this Section 5.06(a). In addition, so long as the Units are evidenced by one or more Global Certificates deposited with the Depositary, procedures for Early Settlement will also be governed by the Applicable Procedures and the standing arrangements between the Depositary and the Purchase Contract Agent or the Company.

Except as provided in Section 5.09(d), no payment shall be made upon Early Settlement of any Purchase Contract on account of any Contract Adjustment Payments (other than deferred Contract Adjustment Payments and any Compounded Contract Adjustment Payments thereon) accrued on such Purchase Contract or on account of any dividends on the Common Stock issued upon such Early Settlement. If the foregoing requirements are first satisfied with respect to Purchase Contracts underlying any Units at or prior to 4:00 p.m., New York City time, on a Business Day, such day shall be the “**Early Settlement Date**” with respect to such Units and if such requirements are first satisfied at or after 4:00 p.m., New York City time, on a Business Day or on a day that is not a Business Day, the Early Settlement Date with respect to such Units shall be the next succeeding Business Day.

Upon the receipt of (i) such Certificate, (ii) a duly completed Election to Settle Early form and (iii) the Early Settlement Amount from the Holder, the Purchase Contract Agent shall pay to the Company such Early Settlement Amount, the receipt of which payment the Company shall promptly confirm in writing. Upon written confirmation of such payment by the Company to the Purchase Contract Agent, the Purchase Contract Agent shall then provide to the Collateral Agent a notice in writing, substantially in the form of Exhibit O hereto, that (A) such Holder has elected to effect an Early Settlement, and (B) the Purchase Contract Agent has received from such Holder, and paid to the Company as confirmed in writing by the Company, the related Purchase Price.

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Upon receipt by the Collateral Agent of the written notice from the Purchase Contract Agent set forth in the preceding paragraph, within two Business Days following the Early Settlement Date, the Collateral Agent shall release from the Pledge, (1) in the case of a Holder of Corporate Units, the shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, or the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, relating to the Purchase Contracts to which Early Settlement is effected, or (2) in the case of a Holder of Treasury Units, the Proceeds of the applicable Pro Rata Portions of the Treasury Securities corresponding to the number of Purchase Contracts as to which such Holder has elected to effect Early Settlement, and shall instruct the Securities Intermediary to Transfer all such Pledged Applicable Ownership Interests in the Treasury Portfolio or shares of Mandatory Convertible Preferred Stock underlying such Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or Proceeds of the Treasury Securities, as the case may be, to the Purchase Contract Agent for distribution to such Holder in accordance with the terms provided for herein, in each case free and clear of the Pledge created hereby.

Holders of Corporate Units and Treasury Units may only effect Early Settlement pursuant to this [Section 5.06\(a\)](#) in integral multiples of 10 Corporate Units or 10 Treasury Units, as the case may be.

Upon Early Settlement of the Purchase Contracts, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments (including any deferred Contract Adjustment Payments and Compounded Contract Adjustment Payments thereon) with respect to such Purchase Contracts shall immediately and automatically terminate, except as provided in [Section 5.09\(d\)](#).

(c) Upon Early Settlement of Purchase Contracts by a Holder of the related Units, on the applicable settlement date, the Company shall issue, and the Holder shall be entitled to receive, and the Company will deliver to the transfer agent for the Common Stock for delivery to such Holder, a number of shares of Common Stock equal to 85% of the Settlement Rate calculated as set forth in [Section 5.01\(a\)](#) for each Purchase Contract as to which Early Settlement is effected, as if the Applicable Market Value for such purpose were equal to the average of the Daily VWAPs of the Common Stock during the Early Settlement Averaging Period (subject to [Section 5.12](#)).

(d) No later than the close of business on the second Business Day after the last Trading Day of the Early Settlement Averaging Period, the Company shall cause the shares of Common Stock issuable upon Early Settlement of Purchase Contracts to be issued and delivered, accompanied with a payment in respect of the aggregate deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), if any, through the Contract Adjustment Payment Date immediately preceding such Early Settlement Date, payable as set forth in [Section 5.09\(e\)\(i\)](#).

(e) Upon Early Settlement of any Purchase Contracts, and subject to receipt of shares of Common Stock from the Company and the Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio or the applicable Proceeds of the Treasury Securities, as the case may be, from the Securities Intermediary, as applicable, the Purchase Contract Agent shall on the applicable settlement date, in accordance with the instructions provided by the Holder thereof on the applicable form of Election to Settle Early on the reverse of the Certificate evidencing the related Units:

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(i) transfer to the Holder (or its designee) the Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio or the applicable Proceeds of the Treasury Securities related to such Units, as the case may be,

(ii) deliver to the Holder (or its designee) a certificate or certificates for the full number of shares of Common Stock issuable upon such Early Settlement, and

(iii) if so required under the Securities Act, deliver a Prospectus for the shares of Common Stock issuable upon such Early Settlement as contemplated by Section 5.06(a).

(f) In the event that Early Settlement is effected with respect to Purchase Contracts underlying less than all the Units evidenced by a Certificate, upon such Early Settlement the Company shall execute and the Purchase Contract Agent shall execute on behalf of the Holder as its attorney-in-fact, and upon receipt of an Issuer Order, authenticate and deliver to the Holder thereof, at the expense of the Company, a Certificate evidencing the Units as to which Early Settlement was not effected.

Section 5.07. No Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued or delivered upon settlement on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement of any Purchase Contracts. Instead of any fractional share of Common Stock that would otherwise be deliverable upon settlement on the Purchase Contract Settlement Date or upon Early Settlement or Fundamental Change Early Settlement of any Purchase Contracts, the Company, through the Purchase Contract Agent, shall make a Cash payment to the Holder in respect of such fractional interest in an amount equal to the percentage of a whole share represented by such fractional share *multiplied* by the Closing Price of the Common Stock on the Trading Day immediately preceding the Purchase Contract Settlement Date (or (x) in the case of any Early Settlement, the Closing Price of the Common Stock on the Trading Day immediately preceding the relevant date for delivery of the shares of Common Stock issuable upon such Early Settlement and (y) in the case of a Fundamental Change Early Settlement, the Closing Price of the Common Stock on the Trading Day immediately preceding the relevant Fundamental Change Early Settlement Date). If, however, a Holder surrenders for settlement more than one Purchase Contract on the same date, then the number of full shares of Common Stock issuable pursuant to such Purchase Contracts shall be computed based upon the aggregate number of Purchase Contracts surrendered on such date, or if the Corporate Units are held in global book-entry form, based on such other aggregate number of Purchase Contracts being surrendered by the Holder on the same date as the Depositary may otherwise require. The Company shall provide the Purchase Contract Agent from time to time with sufficient funds and instructions to permit the Purchase Contract Agent to make all cash payments required by this Section 5.07 in a timely manner.

Section 5.08. Charges and Taxes. The Company will pay all stock transfer and similar taxes attributable to the initial issuance and delivery of the shares of Common Stock pursuant to the Purchase Contracts; *provided, however*, that the Company shall not be required to pay any such tax or taxes that may be payable in respect of any exchange of or substitution for a Certificate evidencing a Unit or any issuance of a share of Common Stock in a name other than that of the registered Holder of a Certificate surrendered in respect of the Units evidenced thereby, other than in the name of the Purchase Contract Agent, as custodian for such Holder, and the Company shall not be required to issue or deliver such share certificates or Certificates unless or until the Person or Persons requesting the transfer or issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 5.09. Contract Adjustment Payments. (a) Subject to Section 5.09(d), the Company shall pay, on each Contract Adjustment Payment Date, the Contract Adjustment Payments payable in respect of each Purchase Contract for the period from and including the immediately preceding Contract Adjustment Payment Date on which Contract Adjustment Payments were paid (or if none, April 19, 2021) to but excluding such Contract Adjustment Payment Date to the Person in whose name a Certificate is registered at the close of business on the Record Date relating to such Contract Adjustment Payment Date. Contract Adjustment Payments shall be payable in cash, by delivery of shares of Common Stock or through any combination of cash and shares of Common Stock, as set forth in Section 5.09(e)(i). Contract Adjustment Payments on Global Certificates payable in cash shall be made by wire transfer of immediately available funds to the Depository on or prior to 10:00 a.m., New York City time, on the relevant Contract Adjustment Payment Date. If the book-entry system for the Units has been terminated, Contract Adjustment Payments payable in cash shall be payable at the designated corporate trust office of the Purchase Contract Agent in the contiguous United States maintained for that purpose on or prior to 10:00 a.m., New York City time, on the relevant Contract Adjustment Payment Date or, at the option of the Company, by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register as of the Record Date, or by wire transfer to the account designated by such Person by a prior written notice to the Purchase Contract Agent, given at least ten calendar days prior to the Contract Adjustment Payment Date. Contract Adjustment Payments payable for any period will be computed (x) for any full quarterly period on the basis of a 360-day year of twelve 30-day months and (y) for any period shorter than a full quarterly period, on the basis of a 30-day month and, for any period less than a month, on the basis of the actual number of days elapsed in a 30-day month. The Contract Adjustment Payments will accrue from April 19, 2021.

(b) Upon the occurrence of a Termination Event, the Company's obligation to pay future Contract Adjustment Payments and any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall cease.

(c) Each Certificate delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of (including as a result of a Collateral Substitution or the recreation of Corporate Units) any other Certificate shall carry the right to accrued and unpaid Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon), which right was carried by the Purchase Contracts underlying such other Certificates.

(d) In the case of any Unit with respect to which Early Settlement or Fundamental Change Early Settlement of the underlying Purchase Contract (if applicable) is effected on a date that is after any Record Date and on or prior to the open of business on the related Contract Adjustment Payment Date, Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) otherwise payable on such Contract Adjustment Payment Date shall be payable on such Contract Adjustment Payment Date notwithstanding such Early Settlement or Fundamental Change Early Settlement, and such Contract Adjustment Payments and deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall be paid to the Person in whose name the Certificate evidencing such Unit is registered at the close of business on such Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Unit with respect to which Early Settlement of the underlying Purchase Contract is effected, Contract Adjustment Payments that would otherwise have accrued after the most recent Contract Adjustment Payment Date with respect to such Purchase Contract shall not be payable.

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(e) (i) Subject to the limitations described below, the Company may pay any Contract Adjustment Payment (including Compounded Contract Adjustment Payments thereon or any portion of any Contract Adjustment Payment), whether or not for a current Contract Adjustment Payment Date or in respect of any prior Contract Adjustment Payment Date, as determined in its sole discretion:

(A) in cash;

(B) by delivery of shares of Common Stock; or

(C) through any combination of cash and shares of Common Stock.

(ii) Each Contract Adjustment Payment shall be made in cash, except to the extent the Company timely elects to make all or any portion of such Contract Adjustment Payment in shares of Common Stock. To the extent the Company does not elect to defer such Contract Adjustment Payment, the Company shall give notice to the Depositary and Holders of any such election and the portion of such Contract Adjustment Payment that will be made in cash and the portion that will be made in Common Stock no later than eight Scheduled Trading Days prior to the Contract Adjustment Payment Date for such Contract Adjustment Payment.

(iii) Any shares of Common Stock issued in payment or partial payment of a Contract Adjustment Payment shall be valued for such purpose at the applicable Five-Day Average Price, *multiplied by 97%*.

(iv) No fractional shares of Common Stock shall be delivered by the Company to Holders in payment or partial payment of a Contract Adjustment Payment. A cash adjustment shall be paid by the Company to each Holder that would otherwise be entitled to receive a fraction of a share of Common Stock based on (x) the Five-Day Average Price and (y) the aggregate number of Units held by such Holder (or if the Units are held in global book-entry form, based on the applicable procedures of the Depositary for determining such number of Units).



(v) To the extent that the Company, in its reasonable judgment, determines that a Registration Statement is required in connection with the issuance of, or for resales of, Common Stock issued as a Contract Adjustment Payment, including Contract Adjustment Payments paid in connection with a Fundamental Change Early Settlement, the Company shall, to the extent such a Registration Statement is not currently filed and effective, use its reasonable best efforts to file and maintain the effectiveness of such a Registration Statement until the earlier of such time as all such shares of Common Stock have been resold thereunder and such time as all such shares are freely tradable under Rule 144 by non-Affiliates of the Company without registration. To the extent applicable, the Company shall also use its reasonable best efforts to have such shares of Common Stock qualified or registered under applicable state securities laws, if required, and approved for listing on the NYSE (or if the Common Stock is not then listed on the NYSE, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed).

(f) The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company's existing and future Indebtedness.

Section 5.10. Deferral of Contract Adjustment Payments.

(a) The Company has the right at any time, and from time to time, to defer payment of all or part of the Contract Adjustment Payments in respect of each Purchase Contract by extending the period for payment of Contract Adjustment Payments to any subsequent Contract Adjustment Payment Date (an "**Extension Period**"), but not beyond the Purchase Contract Settlement Date (or, with respect to Purchase Contracts for which (i) an effective Fundamental Change Early Settlement has occurred, the Fundamental Change Early Settlement Date or (ii) an effective Early Settlement has occurred, the Contract Adjustment Payment Date immediately preceding the Early Settlement Date). Prior to the expiration of any Extension Period, the Company may further extend such Extension Period to any subsequent Contract Adjustment Payment Date, but not beyond the Purchase Contract Settlement Date (or any applicable Fundamental Change Early Settlement Date or Contract Adjustment Payment Date immediately preceding the Early Settlement Date, as the case may be).

If the Company so elects to defer Contract Adjustment Payments, the Company shall pay additional Contract Adjustment Payments on such deferred installments of Contract Adjustment Payments at the annual rate then in effect for Contract Adjustment Payments, compounding on each succeeding Contract Adjustment Payment Date, to, but excluding, the date such deferred installments are paid in full (the accrued additional Contract Adjustment Payments thereon, being referred to herein as the "**Compounded Contract Adjustment Payments**"). The Company may pay any such deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on any scheduled Contract Adjustment Payment Date to the Holder on the related Record Date, subject to subsection (c) below.

At the end of each Extension Period, including as the same may be extended as provided above, or, in the event of an effective Early Settlement or Fundamental Change Early Settlement, on the date shares of Common Stock are delivered in respect of such Early Settlement or the Fundamental Change Early Settlement Date, as the case may be, the Company shall pay all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) then due in the manner set forth in Section 5.09(a) (in the case of the end of an Extension Period), in the manner set forth in Section 5.06(b) (in the case of an Early Settlement) or in the manner set forth in Section 5.04 (in the case of a Fundamental Change Early Settlement) to the extent such amounts are not deducted from the amount otherwise payable by the Holder in the case of any Early Settlement or any Fundamental Change Early Settlement. In the event of an Early Settlement, the Company shall pay all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) then payable, if any, on the Purchase Contracts being settled early through the Contract Adjustment Payment Date immediately preceding the applicable Early Settlement Date. In the event of a Fundamental Change Early Settlement, the Company shall pay all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) due on the Purchase Contracts being settled on the Fundamental Change Early Settlement Date to, but excluding, such Fundamental Change Early Settlement Date.

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Upon termination of any Extension Period and the payment of all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) and all accrued and unpaid Contract Adjustment Payments then due, the Company may commence a new Extension Period; *provided* that such Extension Period, together with all extensions thereof, may not extend beyond the Purchase Contract Settlement Date (or any applicable Early Settlement Date or Fundamental Change Early Settlement Date). Except in the case of an Early Settlement or Fundamental Change Early Settlement, no Contract Adjustment Payments shall be due and payable during an Extension Period except at the end thereof.

(b) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of its election to extend any period for the payment of Contract Adjustment Payments, the expected length of any such Extension Period and any extension of any Extension Period, at least five Business Days before the earlier of (i) the Record Date for the Contract Adjustment Payment Date on which Contract Adjustment Payments would have been payable except for the election to begin or extend the Extension Period or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Contract Adjustment Payment Date.

(c) The Company shall give written notice to the Purchase Contract Agent (and the Purchase Contract Agent shall promptly thereafter give notice thereof to Holders of Purchase Contracts) of the end of an Extension Period or its election to pay any portion of the deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) on a Contract Adjustment Payment Date prior to the end of an Extension Period, at least five Business Days before the earlier of (i) the Record Date for the Contract Adjustment Payment Date on which such Extension Period shall end or such payment of deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) shall be made or (ii) the date the Purchase Contract Agent is required to give notice to any securities exchange or to Holders of Purchase Contracts of such Record Date or such Contract Adjustment Payment Date.

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(d) In the event the Company exercises its option to defer the payment of Contract Adjustment Payments, then, until all deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) have been paid, the Company shall not (1) declare or pay any dividends on, or make any distributions on, or redeem, purchase or acquire, or make a liquidation payment with respect to, any shares of the Company's capital stock (including the Mandatory Convertible Preferred Stock), (2) make any payment of principal of, or interest or premium, if any, on, or repay, repurchase or redeem any of the Company's debt securities that rank on parity with, or junior to, the Contract Adjustment Payments, or (3) make any guarantee payments under any guarantee by the Company of securities of any of its Subsidiaries if the Company's guarantee ranks on parity with, or junior to, the Contract Adjustment Payments; *provided* that the foregoing does not apply to:

(i) purchases, redemptions or other acquisitions of the Company's capital stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors, agents or consultants or a stock purchase or dividend reinvestment plan, or the satisfaction of the Company's obligations pursuant to any contract or security outstanding on the date that the Contract Adjustment Payment is deferred requiring the Company to purchase, redeem or acquire its capital stock;

(ii) any payment, repayment, redemption, purchase, acquisition or declaration of dividends described in clause (i) as a result of a reclassification of the Company's capital stock, or the exchange or conversion of all or a portion of one class or series of the Company's capital stock, for another class or series of the Company's capital stock;

(iii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the Company's capital stock or the security being converted or exchanged;

(iv) dividends or distributions paid or made in the Company's capital stock (or rights to acquire the Company's capital stock), or repurchases, redemptions or acquisitions of capital stock in connection with the issuance or exchange of capital stock (or of securities convertible into or exchangeable for shares of the Company's capital stock);

(v) redemptions, exchanges or repurchases of, or with respect to, any rights outstanding under a shareholder rights plan outstanding on the date that the Contract Adjustment Payment is deferred or the declaration or payment thereunder of a dividend or distribution of or with respect to rights in the future;

(vi) payments on any trust preferred securities, subordinated debentures, junior subordinated debentures or junior subordinated notes, or any guarantees of any of the foregoing, in each case, that rank equal in right of payment with the Contract Adjustment Payments, so long as the amount of payments made on account of such securities or guarantees and the Purchase Contracts is paid on all such securities and guarantees and the Purchase Contracts then outstanding on a *pro rata* basis in proportion to the full payment to which each series of such securities, guarantees or Purchase Contracts is then entitled if paid in full; *provided* that, for the avoidance of doubt, the Company shall not make Contract Adjustment Payments in part; or

(vii) any payment of deferred interest or principal on, or repayment, redemption or repurchase of, parity or junior securities that, if not made, would cause the Company to breach the terms of the instrument governing such parity or junior securities.

Section 5.11. Anti-dilution Adjustments. The Maximum Settlement Rate shall be subject to the following adjustments:

(a) If the Company issues Common Stock as a dividend or distribution on the Common Stock to all or substantially all holders of the Common Stock, or the Company effects a share split or share combination, the Maximum Settlement Rate shall be adjusted based on the following formula:

$$SR_1 = SR_0 \times \frac{OS_1}{OS_0}$$

where,

$SR_0$  = the Maximum Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution or immediately prior to the open of business on the effective date for such share split or share combination, as the case may be;

$SR_1$  = the Maximum Settlement Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such effective date, as the case may be;

$OS$  = the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such effective date, as the case may be, in each case, prior to giving effect to such event; and

$OS_1$  = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such event.

Any adjustment made pursuant to this clause ((a)) shall become effective as of the close of business on the Record Date for such dividend or other distribution or as of the open of business on the effective date for such share split or share combination becomes effective, as applicable. If any dividend or distribution in this clause ((a)) is declared but not so paid or made, the new Maximum Settlement Rate shall be readjusted, on the date that the Board of Directors determines not to pay or make such dividend or distribution, to the Maximum Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company distributes to all or substantially all holders of Common Stock any rights, options or warrants entitling them for a period of not more than 45 calendar days after the date of distribution thereof to subscribe for or purchase Common Stock, in any case at an exercise price per share of Common Stock less than the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of such distribution, the Maximum Settlement Rate shall be increased based on the following formula:

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$$SR_1 = SR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$SR_0$  = the Maximum Settlement Rate in effect immediately prior to the close of business on the Record Date for such distribution;

$SR_1$  = the Maximum Settlement Rate in effect immediately after the close of business on such Record Date;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such distribution;

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

Y = the number of shares of Common Stock equal to the quotient of (A) the aggregate price payable to exercise such rights, options or warrants *divided by* (B) the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of the distribution of such rights, options or warrants.

If any right, option or warrant described in this clause ((b)) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof (and as a result no additional shares of Common Stock are delivered or issued pursuant to such rights, options or warrants), the new Maximum Settlement Rate shall be readjusted, as of the date of such expiration, to the Maximum Settlement Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery or issuance of only the number of shares of Common Stock actually delivered.

For purposes of this clause ((b)), in determining whether any rights, options or warrants entitle the holders thereof to subscribe for or purchase shares of Common Stock at a price per share of Common Stock less than the average of the Closing Prices of the Common Stock for the 10 consecutive Trading Days ending on, and including, the Trading Day immediately preceding the date of the announcement of the distribution of such rights, options or warrants, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

Any increase to the Maximum Settlement Rate made under this clause ((b)) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for such distribution.

(c) (1) If the Company distributes shares of capital stock, evidences of indebtedness or other assets or property of the Company or rights, options or warrants to acquire the Company's capital stock or other securities to all or substantially all holders of Common Stock (excluding (i) any dividend, distribution or issuance as to which an adjustment was effected pursuant to clause ((a)) or ((b)) above, (ii) any dividend or distribution paid exclusively in Cash, and (iii) any Spin-Off to which the provisions in clause (c)(2) below apply), the Maximum Settlement Rate shall be increased based on the following formula:

$$SR_1 = SR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

SR<sub>0</sub> = the Maximum Settlement Rate in effect immediately prior to the close of business on the Record Date for such distribution;

SR<sub>1</sub> = the Maximum Settlement Rate in effect immediately after the close of business on such Record Date;

SP<sub>0</sub> = the Closing Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Board of Directors), on the Record Date for such dividend or distribution, of the shares of capital stock, evidences of indebtedness, assets or property so distributed, expressed as an amount per share of Common Stock.

An adjustment to the Maximum Settlement Rate made pursuant to this Section 5.11(c)(1) shall become effective as of the close of business on the Record Date for such distribution.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP<sub>0</sub>" (as defined above), in lieu of the foregoing increase, each Holder of a Purchase Contract shall receive, for each Purchase Contract, at the same time and upon the same terms as holders of shares of Common Stock, the amount of such distributed shares of capital stock, evidences of indebtedness or other assets or property that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Settlement Rate on the Record Date for such dividend or distribution.

(2) However, if the Company distributes to all or substantially all holders of Common Stock, capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit, in each case, that is, or when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), then the Maximum Settlement Rate shall instead be increased based on the following formula:

$$SR_1 = SR_0 \times \frac{(FMV_0 + MP_0)}{MP_0}$$

where,

$SR_0$  = the Maximum Settlement Rate in effect immediately prior to the end of the Valuation Period;

$SR_1$  = the Maximum Settlement Rate in effect immediately after the end of the Valuation Period;

$FMV_0$  = the average of the closing prices of the capital stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over each of the 10 consecutive Trading Days commencing on, and including, the Ex-Dividend Date for such dividend or distribution (the “**Valuation Period**”); and

$MP_0$  = the average of the Closing Prices of the Common Stock over the Valuation Period.

The adjustment to the Maximum Settlement Rate under this clause (c)(2) shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that if a Holder elects to early settle the Purchase Contracts pursuant to Section 5.04 or Section 5.06, or the Purchase Contract Settlement Date occurs, in either case, during the Valuation Period, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the date on which such Holder elected its early settlement right pursuant to Section 5.04 or Section 5.06, or the Business Day immediately preceding the Purchase Contract Settlement Date, as the case may be, in determining the applicable Maximum Settlement Rate.

If any dividend or distribution described in this clause (c) is declared but not so paid or made, the new Maximum Settlement Rate shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Maximum Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

(d) If any Cash dividend or distribution is made to all or substantially all holders of Common Stock other than a regular, quarterly Cash dividend that does not exceed \$0.22 per share (the “**Reference Dividend**”), the Maximum Settlement Rate shall be increased based on the following formula:

$$SR_1 = SR_0 \times \frac{SP_0 - T}{SP_0 - C}$$

where,

$SR_0$  = the Maximum Settlement Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

$SR_1$  = the Maximum Settlement Rate in effect immediately after the close of business on such Record Date;

$SP_0$  = the Closing Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such distribution;

T = the Reference Dividend; *provided* that if the dividend or distribution is not a regular quarterly Cash dividend, the Reference Dividend shall be deemed to be zero; and

C = the amount in Cash per share the Company distributes to all or substantially all holders of Common Stock.

Any increase to the Maximum Settlement Rate made pursuant to this Section 5.11(d) shall become effective as of the close of business on the Record Date for such dividend or distribution. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP<sub>0</sub>” (as defined above), in lieu of the foregoing increase, each Holder of a Purchase Contract shall receive, for each Purchase Contract, at the same time and upon the same terms as holders of shares of Common Stock, the amount of distributed Cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Settlement Rate on the Record Date for such cash dividend or distribution.

The Reference Dividend shall be subject to an inversely proportional adjustment whenever the Maximum Settlement Rate is adjusted, other than pursuant to this clause ((d)). For the avoidance of doubt, the Reference Dividend shall be zero in the case of a Cash dividend that is not a regular quarterly dividend.

If any dividend or distribution described in this clause ((d)) is declared but not so paid or made, the new Maximum Settlement Rate shall be readjusted, as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Maximum Settlement Rate that would then be in effect if such dividend or distribution had not been declared.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock to the extent that the Cash and value of any other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the Closing Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Maximum Settlement Rate shall be increased based on the following formula:

$$SR_1 = SR_0 \times \frac{FMV + (SP_1 \times OS_1)}{SP_1 \times OS_0}$$

where,

$SR_0$  = the Maximum Settlement Rate in effect immediately prior to the close of business on the Trading Day immediately following the date on which such tender or exchange offer expires;

$SR_1$  = the Maximum Settlement Rate in effect immediately after the close of business on the Trading Day immediately following the date on which such tender or exchange offer expires;

$FMV$  = the fair market value (as determined in good faith by the Board of Directors, whose good faith determination shall be conclusive), at the close of business on the Trading Day immediately following the date on which such tender or exchange offer expires, of the aggregate value of all Cash and any other consideration paid or payable for shares validly tendered or exchanged and not withdrawn as of the expiration date;



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$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the last time tenders or exchanges may be made pursuant to such tender or exchange offer (prior to giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer);

$OS_1$  = the number of shares of Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender or exchange offer (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer); and

$SP_1$  = the Closing Price of the Common Stock on the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Maximum Settlement Rate under this Section 5.11(e) shall occur at the close of business on the Trading Day immediately following the date on which such tender or exchange offer expires.

(f) To the extent that the Company has a shareholders rights plan involving the issuance of share purchase rights or other similar rights to all or substantially all holders of the Common Stock in effect upon settlement of a Purchase Contract, the Holder thereof will receive, in addition to the Common Stock issuable upon settlement of such Purchase Contract, the related rights for the Common Stock under the shareholders rights plan, unless, prior to any settlement of such Purchase Contract, the rights have separated from the Common Stock, in which case the Maximum Settlement Rate shall be adjusted at the time of separation as if the Company made a distribution to all holders of Common Stock as described in clause (c)(1) above, subject to readjustment in the event of the expiration, termination or redemption of the rights under the shareholder rights plan.

(g) The Company may increase the Maximum Settlement Rate if the Board of Directors deems it advisable to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend or distribution of shares (or rights to acquire shares) or from any event treated as a dividend or distribution for income tax purposes or for any other reasons.

(h) Adjustments to the Maximum Settlement Rate shall be calculated by the Company to the nearest ten thousandth of a share. No adjustment to the Maximum Settlement Rate shall be required unless the adjustment would require an increase or decrease of at least one percent in the Maximum Settlement Rate. If any adjustment is not required to be made because it would not change the Maximum Settlement Rate by at least one percent, then the adjustment shall be carried forward and taken into account in any subsequent adjustment. All adjustments shall be made not later than the Purchase Contract Settlement Date, any Early Settlement Date, any Fundamental Change Early Settlement Date and the time at which the Company is required to determine the relevant Settlement Rate or amount of Make-Whole Shares (if applicable) in connection with any settlement with respect to the Purchase Contracts.

(i) No adjustment to the Maximum Settlement Rate shall be made if Holders participate, as a result of holding the Purchase Contracts and without having to settle the Purchase Contracts that form part of the Units, in the transaction that would otherwise give rise to an adjustment as if they held, per Purchase Contract, a number of shares of Common Stock equal to the Maximum Settlement Rate, at the same time and upon the same terms as the holders of Common Stock participate in the transaction.

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(j) Except as described in Section 5.11(a), (b), (c), (d) and (e) above, the Maximum Settlement Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of options, restricted stock or other awards in connection with any employment contract, executive compensation plan, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, consultants or independent contractors or the exercise of such options or other awards;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Units were first issued;

(iv) for a change in the par value or no par value of the Common Stock; or

(v) for accrued and unpaid Contract Adjustment Payments.

(k) If an adjustment is made to the Maximum Settlement Rate, an adjustment also shall be made to the Reference Price on an inversely proportional basis solely to determine which of the clauses of the definition of Settlement Rate shall be applicable to determine the Settlement Rate with respect to the Purchase Contract Settlement Date, any Early Settlement Date or any Fundamental Change Early Settlement Date.

(l) If any adjustment to the Maximum Settlement Rate becomes effective, or any effective date, expiration date, Ex-Dividend Date or Record Date for any stock split or reverse stock split, tender or exchange offer, issuance, dividend or distribution (relating to a required Maximum Settlement Rate adjustment) occurs, during the period beginning on, and including, (i) the open of business on a first Trading Day of the Market Value Averaging Period or (ii) in the case of an Early Settlement or Fundamental Change Early Settlement, the relevant Early Settlement Date or the Fundamental Change Early Settlement Date and, in each case, ending on, and including, the date on which the Company delivers shares of Common Stock under the related Purchase Contract, the Company shall make appropriate adjustments to the Maximum Settlement Rate, the Reference Price and/or the number of shares of Common Stock deliverable upon settlement with respect to the Purchase Contract, in each case, consistent with the methodology used to determine the anti-dilution adjustments set forth in this Section 5.11. If any adjustment to the Maximum Settlement Rate becomes effective, or any effective date, expiration date, Ex-Dividend Date or Record Date for any stock split or reverse stock split,

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tender or exchange offer, issuance, dividend or distribution (in each case, relating to a required Maximum Settlement Rate adjustment) occurs, during the period used to determine the Applicable Market Value, Stock Price, the Five-Day Average Period or any other averaging or similar period hereunder, the Company shall make appropriate adjustments to the applicable prices, consistent with the methodology used to determine the anti-dilution adjustments set forth in this Section 5.11.

(m) (i) Whenever the Maximum Settlement Rate is adjusted as herein provided, the Company shall, as promptly as practicable following the occurrence of an event that requires an adjustment pursuant to this Section 5.11 (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware):

(A) compute the adjusted Maximum Settlement Rate in accordance with this Section 5.11 and prepare and transmit to the Purchase Contract Agent an Officer's Certificate setting forth the adjusted Maximum Settlement Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and

(B) provide a written notice to the Holders of the Units and the Purchase Contract Agent of the occurrence of such event and a statement in reasonable detail setting forth the method by which the adjustment to the Maximum Settlement Rate was determined and setting forth the adjusted Maximum Settlement Rate.

(ii) The Purchase Contract Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment of the Maximum Settlement Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in making the same. The Purchase Contract Agent shall be fully authorized and protected in relying on any Officer's Certificate delivered pursuant to Section 5.11(m)(i) and any adjustment contained therein and the Purchase Contract Agent shall not be deemed to have knowledge of any adjustment unless and until it has received such Officer's Certificate. The Purchase Contract Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at the time be issued or delivered with respect to any Purchase Contract; and the Purchase Contract Agent makes no representation with respect thereto. The Purchase Contract Agent shall not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock pursuant to a Purchase Contract or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 5.

Section 5.12. Reorganization Events. The following events are defined as "**Reorganization Events**":

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

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

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(iii) any sale, lease or other transfer to another Person of the consolidated assets of the Company and its Subsidiaries substantially as an entirety; or

(iv) any statutory exchange of the Common Stock;

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including Cash or any combination thereof) (“**Exchange Property**”).

Following the effective date of a Reorganization Event, the Settlement Rate shall be determined by reference to the value of an Exchange Property Unit, and the Company shall deliver, upon settlement of any Purchase Contract, a number of Exchange Property Units equal to the number of shares of Common Stock that it would otherwise be required to deliver. In the event holders of Common Stock (other than any Constituent Person or Affiliate thereof) have the opportunity to elect the form of consideration to be received in any Reorganization Event, the Exchange Property Unit that Holders of the Units are entitled to receive will be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock.

In the event of such a Reorganization Event, the Person formed by such consolidation or surviving such merger or, if other than the Company, the Person which acquires the Company’s assets and those of the Company’s Subsidiaries substantially as an entirety, shall execute and deliver to the Purchase Contract Agent an agreement providing that the holder of each Unit that remains outstanding after the Reorganization Event (if any) will have the rights described in the preceding paragraph and expressly assuming all of the Company’s obligations under the Purchase Contracts, this Agreement, the Mandatory Convertible Preferred Stock and the Remarketing Agreement. Such supplemental agreement shall provide for adjustments to the amount of any securities constituting all or a portion of an Exchange Property Unit and/or adjustments to the Maximum Settlement Rate, which, for events subsequent to the effective date of such Reorganization Event, will be as nearly equivalent as may be practicable, as determined by the Company in its sole commercially reasonable discretion, to the adjustments provided for under Section 5.11 (it being understood that any such adjustment may be zero and that no such adjustments shall be required with respect to any portion of the Exchange Property that consists of cash).

In connection with any Reorganization Event, the Company shall also adjust the Reference Dividend based on the number of shares of common stock comprising an Exchange Property Unit and (if applicable) the value of any non-stock consideration comprising an Exchange Property Unit. If an Exchange Property Unit is composed solely of non-stock consideration, the Reference Dividend shall be zero.

The provisions described in this Section 5.12 shall similarly apply to successive Reorganization Events.

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**ARTICLE 6**

**RIGHTS AND REMEDIES OF HOLDERS**

Section 6.01. Unconditional Right of Holders to Receive Contract Adjustment Payments and to Purchase Shares of Common Stock. Each Holder of a Unit shall have the right, which is absolute and unconditional, (a) subject to Article 5, to receive each Contract Adjustment Payment and deferred Contract Adjustment Payment with respect to the Purchase Contract comprising part of such Unit on the respective Contract Adjustment Payment Date for such Unit pursuant to the terms hereof and (b) except upon and following a Termination Event, to purchase shares of Common Stock pursuant to such Purchase Contract and, in each such case, to institute suit for the enforcement of any such right to receive Contract Adjustment Payments and the right to purchase shares of Common Stock, and such rights shall not be impaired without the consent of such Holder.

Section 6.02. Restoration of Rights and Remedies. If any Holder has instituted any proceeding to enforce any right or remedy under this Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Securities Intermediary and such Holder shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of such Holder shall continue as though no such proceeding had been instituted.

Section 6.03. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates in the last paragraph of Section 3.09, no right or remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.04. Delay or Omission Not Waiver. No delay or omission of any Holder to exercise any right upon a default or remedy upon a default shall impair any such right or remedy or constitute a waiver of any such right. Every right and remedy given by this Article 6 or by law to the Holders may be exercised from time to time, and as often as may be deemed expedient, by such Holders.

Section 6.05. Undertaking for Costs. All parties to this Agreement agree, and each Holder of a Unit, by its acceptance of such Unit shall be deemed to have agreed, that any court of competent jurisdiction may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Purchase Contract Agent for any action taken, suffered or omitted by it as Purchase Contract Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and costs against any party litigant in such suit, having due regard to the merits and good faith of the claims or

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defenses made by such party litigant; *provided* that the provisions of this Section 6.05 shall not apply to any suit instituted by the Purchase Contract Agent, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% of the Outstanding Units, or to any suit instituted by any Holder for the enforcement of the obligation to pay Contract Adjustment Payments on or after the Contract Adjustment Payment Date therefor in respect of any Unit held by such Holder, or for enforcement of the right to purchase shares of Common Stock under the Purchase Contracts constituting part of any Unit held by such Holder.

Section 6.06. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Purchase Contract Agent or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE 7

### THE PURCHASE CONTRACT AGENT

#### Section 7.01. Certain Duties and Responsibilities.

(a) The Purchase Contract Agent hereby appointed by the Company:

(i) undertakes to perform, with respect to the Units, such duties and only such duties as are specifically set forth in this Agreement and the Remarketing Agreement to be performed by the Purchase Contract Agent and no implied covenants or obligations shall be read into this Agreement or the Remarketing Agreement against the Purchase Contract Agent; and

(ii) may conclusively rely, in the absence of bad faith on its part, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Purchase Contract Agent and conforming to the requirements of this Agreement or the Remarketing Agreement, as applicable, but in the case of any certificates or opinions which by any provision hereof are specifically required to be furnished to the Purchase Contract Agent, the Purchase Contract Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement or the Remarketing Agreement, as applicable (but need not confirm or investigate the accuracy of the mathematical calculations or other facts, statements, opinions, conclusions or matters stated therein).

(b) No provision of this Agreement or the Remarketing Agreement shall be construed to relieve the Purchase Contract Agent from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that:

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(i) this Section 7.01(b) shall not be construed to limit the effect of Section 7.01(a) or Section 7.01(c);

(ii) the Purchase Contract Agent shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be conclusively determined by a court of competent jurisdiction that the Purchase Contract Agent was grossly negligent in ascertaining the pertinent facts; and

(iii) the Purchase Contract Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority of the aggregate stated amount of the Outstanding Certificates, relating to the time, method and place of conducting any proceeding for any right or remedy available to the Purchase Contract Agent, or exercising any power conferred upon the Purchase Contract Agent, under this Agreement with respect to the Units.

(c) No provision of this Agreement, the Remarketing Agreement, the Certificate of Designations or any Certificate shall require the Purchase Contract Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity and/or security against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Agreement, the Remarketing Agreement, the Certificate of Designations and any Certificate relating to the conduct or affecting the liability of or affording protection to the Purchase Contract Agent shall be subject to the provisions of this Section 7.01.

(e) The Purchase Contract Agent is authorized to execute and deliver the Remarketing Agreement in its capacity as Purchase Contract Agent. The rights, privileges, protections, immunities and benefits afforded to the Purchase Contract Agent and each Indemnitee under this Agreement, including, without limitation, its and their rights to be compensated, reimbursed and indemnified, shall also extend to and cover the Purchase Contract Agent and each Indemnitee with respect to the role of the Purchase Contract Agent as Purchase Contract Agent under, including action taken, omitted to be taken or suffered by the Purchase Contract Agent pursuant to the Remarketing Agreement, the Certificate of Designations, any Certificate or any notice or instruction entered into by the Purchase Contract Agent under the terms of this Agreement.

(f) The Purchase Contract Agent shall be under no duty to afford the Collateral any greater degree of care than it gives to its own similar property. In acting hereunder, the Purchase Contract Agent shall act solely as the attorney-in-fact and the agent for the Holders hereunder (and not as a fiduciary).

(g) None of the Purchase Contract Agent, the Collateral Agent, the Custodial Agent nor the Securities Intermediary shall be responsible for any calculations under this Agreement or with respect to the Units.

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(h) The Purchase Contract Agent may hold Common Stock but, for the avoidance of doubt, will not be required to issue shares of Common Stock.

(i) The Purchase Contract Agent shall not at any time be under any duty or responsibility to any Holder to determine the Settlement Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Settlement Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or in this Agreement or in any supplemental agreement hereunder provided to be employed, in making the same. The Purchase Contract Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the settlement of any Purchase Contract; and the Purchase Contract Agent make no representations with respect thereto. The Purchase Contract Agent shall not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Purchase Contract for the purpose of settlement or to comply with any of the duties, responsibilities or covenants of the Company contained in this Agreement. Without limiting the generality of the foregoing, the Purchase Contract Agent shall not be under any responsibility to (a) determine whether a supplemental agreement needs to be entered into or (b) determine the correctness of any provisions contained in any supplemental agreement, in each case, entered into pursuant to Section 5.12 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the settlement of their Purchase Contract pursuant to Article 5 or to any adjustment to be made with respect thereto, but may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Purchase Contract Agent prior to the execution of any such supplemental agreement) with respect thereto.

Section 7.02. Notice of Default. Within 90 calendar days after the occurrence of any default by the Company hereunder of which a Responsible Officer of the Purchase Contract Agent has received written notice thereof and such notice references the Company, the Units and this Agreement, the Purchase Contract Agent shall transmit by mail to the Holders, as their names and addresses appear in the Security Register, notice of such default hereunder, unless such default shall have been cured or waived; *provided* that, except for a default in any payment obligation hereunder, the Purchase Contract Agent shall be protected in withholding such notice if and for so long as a Responsible Officer of the Purchase Contract Agent in good faith determines that the withholding of such notice is in the interests of Holders of the Units.

Section 7.03. Certain Rights of Purchase Contract Agent.

Subject to the provisions of Section 7.01:

(a) the Purchase Contract Agent may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;



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(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate, Issuer Order or Issuer Request, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) any request, instruction or direction of a Beneficial Owner to the Purchase Contract Agent shall be sufficiently evidenced by a written request, instruction or order signed in the name of such Beneficial Owner by an authorized representative of such Beneficial Owner and certifying to the Purchase Contract Agent that such Person is a Beneficial Owner under the terms of this Agreement; the Purchase Contract Agent shall have the right to require that any directions, instructions or notices provided to it be signed by an authorized representative of such Beneficial Owner, be provided on corporate letterhead or contain a medallion signature guarantee, or contain such other evidence as may be reasonably requested by it, to establish the identity and/or signatures thereon; in acting hereunder, in the absence of gross negligence or willful misconduct by the Purchase Contract Agent, the Purchase Contract Agent shall be fully authorized and protected in relying upon any such request, instruction, direction and certification received by a Beneficial Owner hereunder;

(d) whenever in the administration of this Agreement, the Remarketing Agreement, the Certificate of Designation or the Certificates, the Purchase Contract Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting to take any action hereunder or thereunder, the Purchase Contract Agent (unless other evidence be herein specifically prescribed in this Agreement) may, in the absence of bad faith, conclusively rely upon an Officer's Certificate or an Opinion of Counsel;

(e) the Purchase Contract Agent may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(f) the Purchase Contract Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or inquire as to the performance by the Company of any of its covenants in this Agreement, but the Purchase Contract Agent may make reasonable further inquiry or investigation into such facts or matters related to the execution, delivery and performance of the Purchase Contracts as it may see fit, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(g) the Purchase Contract Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees or an Affiliate of the Purchase Contract Agent and the Purchase Contract Agent shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodian or nominee or an Affiliate appointed with due care by it hereunder;

(h) the Purchase Contract Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Holders pursuant to this Agreement, unless such Holders shall have offered to the Purchase Contract Agent security and/or indemnity satisfactory to the Purchase Contract Agent against the costs, expenses, claims and liabilities which might be incurred by it in compliance with such request or direction;

(i) the Purchase Contract Agent shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement;

(j) the rights, privileges, protections, immunities and benefits given to the Purchase Contract Agent, including, without limitation, its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Purchase Contract Agent in each of its capacities hereunder, and to each officer, director, employee of the Purchase Contract Agent and each agent, custodian and other Person employed, in any capacity whatsoever, by the Purchase Contract Agent to act hereunder and shall survive the resignation or removal of the Purchase Contract Agent and the termination for any reason of this Agreement and the termination, satisfaction and discharge of the Units and the Purchase Contracts;

(k) the Purchase Contract Agent shall not be deemed to have notice or be charged with knowledge of any Fundamental Change, Termination Event or any default hereunder unless a Responsible Officer of the Purchase Contract Agent has received written notice from the Company or any Holder of such Fundamental Change, Termination Event or default at the Corporate Trust Office of the Purchase Contract Agent, and such notice references the Company, the Units and this Agreement and, in the case of a default, identifies such default;

(l) the Purchase Contract Agent may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Agreement along with specimen signatures, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(m) anything in this Agreement notwithstanding, in no event shall the Purchase Contract Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit), even if the Purchase Contract Agent has been advised as to the likelihood of such loss or damage and regardless of the form of action;

(n) the Purchase Contract Agent shall not be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, pandemics, epidemics, recognized public emergencies, quarantine restrictions, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, hacking, cyber-attacks, or other use or infiltration of the Purchase Contract Agent's technological infrastructure exceeding authorized access, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility, it being understood that the Purchase Contract Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

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(o) the Purchase Contract Agent shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder;

(p) the duties of the Purchase Contract Agent hereunder and under the Remarketing Agreement and under any other document or instrument referred to or provided for herein or in connection herewith are solely ministerial and administrative in nature;

(q) the Purchase Contract Agent shall not be required to initiate or conduct any litigation or collection proceedings hereunder and shall have no responsibilities with respect to any default hereunder, in each case, except as expressly set forth herein;

(r) the permissive right of the Purchase Contract Agent to take or refrain from taking action hereunder shall not be construed as a duty; and

(s) as to any discretionary action or matters not expressly provided for by this Agreement, the Purchase Contract Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Company or the Holders, as the case may be; *provided, however*, it is understood that in all cases the Purchase Contract Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such direction from the Company or the Holders (acting in accordance with this Agreement); this provision is intended solely for the benefit of the Purchase Contract Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

Section 7.04. Not Responsible for Recitals or Issuance of Units. The recitals contained herein, in the Remarketing Agreement, and in the Certificates shall be taken as the statements of the Company, and the Purchase Contract Agent assumes no responsibility for their accuracy or validity. The Purchase Contract Agent makes no representations as to the validity or sufficiency of either this Agreement or of the Units or the Pledge or the Collateral or the Remarketing Agreement or any other agreement, document or instrument referred to or provided for herein or in connection herewith and shall have no responsibility for perfecting or maintaining the perfection of any security interest in the Collateral nor for making any calculations hereunder. The Purchase Contract Agent shall not be accountable for the use or application by the Company of the proceeds in respect of the Purchase Contracts or for funds received and disbursed in accordance with this Agreement. The Purchase Contract Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to the issuance of the Units.

Section 7.05. May Hold Units. Any Security Registrar or any other agent of the Company, or the Purchase Contract Agent, in their individual or any other capacity, may become the owner or pledgee of Units and may otherwise deal with the Company, the Collateral Agent or any other Person with the same rights it would have if it were not Security Registrar or such other agent, or the Purchase Contract Agent. The Company may become the owner or pledgee of Units.

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Section 7.06. Money Held in Custody. Money or other property held by the Purchase Contract Agent in custody hereunder need not be segregated from the Purchase Contract Agent's other funds except to the extent required by law or provided herein; *provided, however*, that when the Purchase Contract Agent holds Cash as a component of the Treasury Portfolio, a Corporate Unit, a Treasury Unit or a Cash Settled Unit, such Cash shall be held in a segregated account hereunder. The Purchase Contract Agent shall be under no obligation to invest or pay interest on any money received by it hereunder except as otherwise expressly provided hereunder or agreed in writing with the Company. If no standing instruction exists at the time any funds are received by the Purchase Contract Agent, the Securities Intermediary or the Collateral Agent, such funds shall remain uninvested without liability for interest or other compensation thereon. The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's liens thereon, or any certificate prepared by the Company in connection therewith, nor shall the Collateral Agent be responsible or liable to the Company for any failure to monitor or maintain any portion of the Collateral. Beyond the exercise of reasonable care in the custody thereof and except as otherwise specifically set forth herein, the Collateral Agent shall not have any duty as to any of the Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Collateral Agent (A) shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by a Collateral Agent in good faith and with reasonable care, and (B) shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which such Collateral Agent accords its own property.

Section 7.07. Compensation and Reimbursement.

The Company agrees:

(a) to pay to the Purchase Contract Agent compensation for all services rendered by it hereunder and under the Remarketing Agreement as the Company and the Purchase Contract Agent shall from time to time agree in writing;

(b) to reimburse the Purchase Contract Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Purchase Contract Agent in accordance with any provision of this Agreement and the Remarketing Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be caused by its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable decision);

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(c) to indemnify the Purchase Contract Agent and any predecessor Purchase Contract Agent (collectively, with the Purchase Contract Agent and its affiliates, officers, directors, employees, representatives and agents, the “**Indemnitees**”) for, and to hold each Indemnitee harmless against, any liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and expenses of outside counsel) (including reasonable fees and expenses of counsel) including taxes (other than taxes based upon, measured by or determined by the income of the Purchase Contract Agent) incurred without gross negligence, bad faith or willful misconduct on its part (as determined by a final, non-appealable judgment of a court of competent jurisdiction), arising out of or in connection with this Agreement, including the acceptance, performance or administration of its duties hereunder or under the Remarketing Agreement, and the Indemnitees’ reasonable costs and expenses (including reasonable fees and expenses of counsel) of enforcing this Agreement and the Remarketing Agreement and defending themselves against any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of the Purchase Contract Agent’s powers or duties hereunder or thereunder; *provided* that the Purchase Contract Agent shall promptly notify the Company of any third-party claim of which a Responsible Officer has received written notice and which may give rise to the indemnity hereunder and give the Company the opportunity to control the defense of such claim with counsel reasonably satisfactory to the applicable Indemnitee. Each Indemnitee may have separate counsel and the Company shall pay the fees and expenses of such counsel. Failure by the Purchase Contract Agent to so notify the Company shall not relieve the Company of its obligations hereunder. Any settlement which affects the Purchase Contract Agent may not be entered into without the written consent of the Purchase Contract Agent, unless the Purchase Contract Agent is given a full and unconditional release from liability with respect to the claims covered thereby and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Purchase Contract Agent; and

(d) to pay or reimburse the Purchase Contract Agent for transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any other document referred to herein.

When the Purchase Contract Agent incurs expenses or renders services in connection with an insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law. “Purchase Contract Agent” for purposes of this Section shall include any predecessor Purchase Contract Agent; *provided, however*, that the gross negligence or willful misconduct of any Purchase Contract Agent hereunder shall not affect the rights of any other Purchase Contract Agent hereunder.

The provisions of this Section 7.07 shall survive the resignation or removal of the Purchase Contract Agent and the termination for any reason of this Agreement, and the termination, satisfaction and discharge of the Units and the Purchase Contracts.

Section 7.08. Corporate Purchase Contract Agent Required; Eligibility. There shall at all times be a Purchase Contract Agent hereunder which shall be a Person organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having (or being a member of a bank holding company having) a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State authority and having a designated corporate trust office in the continental United States, if there be such a Person in the continental United States, qualified and eligible under this Article 7 and willing to act on reasonable terms. If such Person publishes or files reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 7.08, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published or filed. If at any time the Purchase Contract Agent shall cease to be eligible in accordance with the provisions of this Section 7.08, it shall resign promptly in the manner and with the effect hereinafter specified in this Article 7.

Section 7.09. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Purchase Contract Agent and no appointment of a successor Purchase Contract Agent pursuant to this Article shall become effective until the acceptance of appointment by the successor Purchase Contract Agent in accordance with the applicable requirements of Section 7.10(a).

(b) The Purchase Contract Agent may resign at any time by giving written notice thereof to the Company 45 calendar days prior to the effective date of such resignation. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10(a) shall not have been delivered to the Purchase Contract Agent within 30 calendar days after the giving of such notice of resignation, the resigning Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(c) The Purchase Contract Agent may be removed at any time by Act of the Holders of a majority in number of the Outstanding Units delivered to the Purchase Contract Agent and the Company. If the instrument of acceptance by a successor Purchase Contract Agent required by Section 7.10(a) shall not have been delivered to the Purchase Contract Agent within 30 calendar days after such Act, the Purchase Contract Agent being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(d) If at any time:

(i) the Purchase Contract Agent shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(ii) the Purchase Contract Agent shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Purchase Contract Agent or of its property shall be appointed or any public officer shall take charge or control of the

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Purchase Contract Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Company by a Board Resolution may remove the Purchase Contract Agent, or (ii) any Holder who has been a bona fide Holder of a Unit for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Purchase Contract Agent and the appointment of a successor Purchase Contract Agent.

(e) If the Purchase Contract Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Purchase Contract Agent for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Purchase Contract Agent and shall comply with the applicable requirements of Section 7.10(a). If no successor Purchase Contract Agent shall have been so appointed by the Company and accepted appointment in the manner required by Section 7.10(a), any Holder who has been a bona fide Holder of a Unit for at least six months, on behalf of itself and all others similarly situated, or the Purchase Contract Agent may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Purchase Contract Agent.

(f) The Company shall give, or shall direct such successor Purchase Contract Agent in writing to give, notice of each resignation and each removal of the Purchase Contract Agent and each appointment of a successor Purchase Contract Agent by mailing written notice of such event by first-class mail, postage prepaid, to all Holders as their names and addresses appear in the applicable Security Register. Each notice shall include the name of the successor Purchase Contract Agent and the address of its Corporate Trust Office.

Section 7.10. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Purchase Contract Agent, every such successor Purchase Contract Agent so appointed shall execute, acknowledge and deliver to the Company and to the retiring Purchase Contract Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Purchase Contract Agent shall become effective and such successor Purchase Contract Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, agencies and duties of the retiring Purchase Contract Agent; but, on the request of the Company or the successor Purchase Contract Agent, such retiring Purchase Contract Agent shall, upon payment of amounts owed to it pursuant to Section 7.07 hereof, execute and deliver an instrument transferring to such successor Purchase Contract Agent all the rights, powers and trusts of the retiring Purchase Contract Agent and duly assign, transfer and deliver to such successor Purchase Contract Agent all property and money held by such retiring Purchase Contract Agent hereunder.

(b) Upon request of any such successor Purchase Contract Agent, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Purchase Contract Agent all such rights, powers and agencies referred to in Section 7.10.

(c) No successor Purchase Contract Agent shall accept its appointment unless at the time of such acceptance such successor Purchase Contract Agent shall be qualified and eligible under this Article 7.

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Section 7.11. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Purchase Contract Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Purchase Contract Agent shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Purchase Contract Agent, shall be the successor of the Purchase Contract Agent hereunder, *provided* that such Person shall be otherwise qualified and eligible under this Article 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been authenticated and executed on behalf of the Holders, but not delivered, by the Purchase Contract Agent then in office, any successor by merger, conversion or consolidation to such Purchase Contract Agent may adopt such authentication and execution and deliver the Certificates so authenticated and executed with the same effect as if such successor Purchase Contract Agent had itself authenticated and executed such Units.

Section 7.12. Preservation of Information; Communications to Holders. (a) The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders received by the Purchase Contract Agent in its capacity as Security Registrar.

(b) If three or more Holders (herein referred to as “**Applicants**”) apply in writing to the Purchase Contract Agent, and furnish to the Purchase Contract Agent reasonable proof that each such Applicant has owned a Unit for a period of at least six months preceding the date of such application, and such application states that the Applicants desire to communicate with other Holders with respect to their rights under this Agreement or under the Units and is accompanied by a copy of the form of proxy or other communication which such Applicants propose to transmit, then the Purchase Contract Agent shall mail to all the Holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Purchase Contract Agent of the materials to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing.

Section 7.13. No Obligations of Purchase Contract Agent. Except to the extent otherwise expressly provided in this Agreement, the Purchase Contract Agent assumes no obligations and shall not be subject to any liability under this Agreement, the Remarketing Agreement or any Purchase Contract in respect of the obligations of the Holder of any Unit thereunder. The Company agrees, and each Holder of a Certificate, by its acceptance thereof, shall be deemed to have agreed, that the Purchase Contract Agent’s execution of the Certificates on behalf of the Holders shall be solely as agent and attorney-in-fact for the Holders, and that the Purchase Contract Agent shall have no obligation to perform such Purchase Contracts on behalf of the Holders, except to the extent expressly provided in Article 5 hereof.

Section 7.14. Tax Compliance. (a) The Purchase Contract Agent shall comply in accordance with the terms hereof with any reasonable written direction received from the Company with respect to the execution or certification of any required documentation and the application of such requirements to particular payments or Holders or in other particular circumstances, and may for purposes of this Agreement conclusively rely on any such direction in accordance with the provisions of Section 7.01(a) hereof. The Company shall be responsible for preparing any correspondence in response to inquiries received by the Company or the Purchase Contract Agent from any Holder or the Depository with respect to any tax matters hereunder and shall directly communicate with such Holder or the Depository with respect to any such tax matters.



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(b) The Purchase Contract Agent shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available, on written request, to the Company or its authorized representative within a reasonable period of time after receipt of such request.

(c) To the extent requested by the Company in writing, the Purchase Contract Agent has agreed to provide ministerial assistance to the Company to enable the Company to comply with applicable tax laws (inclusive of rules, regulations and interpretations promulgated by competent authorities) in effect from time to time related to this Agreement, the Units or the Purchase Contracts. The Company agrees to provide the Purchase Contract Agent with timely and sufficient information, upon which the Purchase Contract Agent shall be entitled to conclusively rely, in order to enable the Purchase Contract Agent to so assist the Company.

Section 7.15. Acknowledgement of Appointment. The Company hereby acknowledges the appointment of U.S. Bank National Association (“**U.S. Bank**”) to act as Purchase Contract Agent on behalf of the Holders hereunder and under the Remarketing Agreement or the Certificates, as applicable, and as their attorney-in-fact hereunder and under the Remarketing Agreement and the Certificates, as applicable. The Company accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with this Agreement, the Remarketing Agreement and the Certificates.

## ARTICLE 8

### SUPPLEMENTAL AGREEMENTS

Section 8.01. Supplemental Agreements Without Consent of Holders. Without the consent of any Holders, the Company, when authorized by a Board Resolution, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Company and the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary to:

- (a) evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Certificates;
- (b) evidence and provide for the acceptance of appointment hereunder by a successor Purchase Contract Agent, Collateral Agent, Securities Intermediary or Custodial Agent;
- (c) add to the covenants of the Company for the benefit of the Holders, or surrender any right or power herein conferred upon the Company;

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(d) cure any ambiguity, defect or inconsistency, to correct or supplement any provisions herein that may be inconsistent with any other provision herein;

(e) make such other provisions in regard to matters or questions arising under this Agreement that do not adversely affect the interests of any Holders in any material respect; or

(f) conform the provisions of this Agreement to the description of the Units contained in the preliminary prospectus supplement relating to the sale of the Corporate Units under the sections entitled "Description of the Equity Units," "Description of the Purchase Contracts," "Certain Provisions of the Purchase Contract and Pledge Agreement," and "Description of the Mandatory Convertible Preferred Stock," as supplemented by the related term sheet.

Section 8.02. Supplemental Agreements with Consent of Holders. With the consent of the Holders of not less than a majority of the Outstanding Purchase Contracts voting together as one class, by Act of said Holders delivered to the Company and the Purchase Contract Agent, the Company, when authorized by a Board Resolution, the Collateral Agent, the Securities Intermediary, the Custodial Agent and the Purchase Contract Agent may enter into an agreement or agreements supplemental hereto for the purpose of modifying in any manner the terms of the Purchase Contracts, or the provisions of this Agreement or the rights of the Holders in respect of the Units; *provided however*, that, except as contemplated herein, no supplemental agreement shall, without the consent of the Holder of each outstanding Purchase Contract affected thereby,

(a) subject to the Company's right to defer Contract Adjustment Payments, change any Contract Adjustment Payment Date;

(b) change the amount or the type of Collateral required to be Pledged to secure a Holder's obligations under any Purchase Contract (except for the rights of Holders of Corporate Units to substitute Treasury Securities or Cash for the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the rights of Holders of Treasury Units to substitute shares of Mandatory Convertible Preferred Stock for the Treasury Securities or the rights of Holders of Cash Settled Units to substitute shares of Mandatory Convertible Preferred Stock for the Cash);

(c) impair the right of the Holder of any Purchase Contract to receive distributions on the related Collateral or otherwise adversely affect the Holder's rights in or to such Collateral;

(d) impair the Holders' right to institute suit for the enforcement of any Purchase Contract or any Contract Adjustment Payments or deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon);

(e) except as set forth in Section 5.06 and Section 5.11, reduce the number of shares of Common Stock to be purchased pursuant to any Purchase Contract, increase the price to purchase shares of Common Stock upon settlement of any Purchase Contract or change the Purchase Contract Settlement Date or the right to Early Settlement or Fundamental Change Early Settlement;

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(f) adversely affect the Holder's rights under a Purchase Contract in any material respect, *provided* that any amendment made pursuant to Section 8.01(f) shall not be deemed to adversely affect the Holder's rights under a Purchase Contract in any respect;

(g) reduce any Contract Adjustment Payments or any deferred Contract Adjustment Payments (including Compounded Contract Adjustment Payments thereon) or change any place where, or the coin or currency or method in which, any Contract Adjustment Payment is payable; or

(h) reduce the percentage of the outstanding Purchase Contracts whose Holders' consent is required for any modification or amendment to the provisions of this Agreement and the Purchase Contracts;

*provided* that if any amendment or proposal referred to above would adversely affect only the Corporate Units, only the Treasury Units or only the Cash Settled Units, then only the affected voting group of Holders as of the record date for the Holders entitled to vote thereon will be entitled to vote on such amendment or proposal, and such amendment or proposal shall not be effective except with the consent of the Holders of not less than a majority of such voting group, or each such Holder affected thereby in the case of an amendment or proposal referred to in clauses (a) through (h) above.

It shall not be necessary for any Act of Holders under this Section 8.02 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such Act shall approve the substance thereof.

Section 8.03. Execution of Supplemental Agreements. In executing, or accepting the additional agencies created by any supplemental agreement permitted by this Article 8 or the modifications thereby of the agencies created by this Agreement, the Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent shall be provided, and (subject to Section 7.01 with respect to the Purchase Contract Agent) shall be fully authorized and protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Agreement, that any and all conditions precedent to the execution and delivery of such supplemental agreement have been satisfied and that the supplemental agreement is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Purchase Contract Agent, the Collateral Agent, the Securities Intermediary and the Custodial Agent may, but shall not be obligated to, enter into any such supplemental agreement which affects their own rights, protections, duties, indemnities or immunities under this Agreement or otherwise.

Section 8.04. Effect of Supplemental Agreements. Upon the execution of any supplemental agreement under this Article 8, this Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Agreement for all purposes; and every Holder of Certificates theretofore or thereafter authenticated, executed on behalf of the Holders and delivered hereunder, shall be bound thereby.

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Section 8.05. Reference to Supplemental Agreements. Certificates authenticated, executed on behalf of the Holders and delivered after the execution of any supplemental agreement pursuant to this Article 8 may, and shall if required by the Purchase Contract Agent, bear a notation in form approved by the Purchase Contract Agent as to any matter provided for in such supplemental agreement. If the Company shall so determine, new Certificates so modified as to conform, in the opinion of the Purchase Contract Agent and the Company, to any such supplemental agreement may be prepared and executed by the Company and authenticated, executed on behalf of the Holders and delivered by the Purchase Contract Agent in exchange for Outstanding Certificates.

## ARTICLE 9

### CONSOLIDATION, MERGER, SALE, CONVEYANCE, TRANSFER OR DISPOSITION

Section 9.01. Covenant Not To Consolidate, Merge, Sell, Convey, Transfer or Dispose Property except under Certain Conditions. The Company shall not merge or consolidate with any other Person or sell or convey all or substantially all of its assets to any Person, unless:

(a) either the Company shall be the surviving Person, or the successor entity (if other than the Company) shall be a corporation duly organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and such corporation shall expressly assume all of the Company's responsibilities and liabilities under the Purchase Contracts, the Corporate Units, the Treasury Units, the Cash Settled Units, this Agreement (including the Pledge provided for herein), and the Remarketing Agreement (if any) by one or more supplemental agreements, in form reasonably satisfactory to the Purchase Contract Agent and the Collateral Agent, executed and delivered to the Purchase Contract Agent and the Collateral Agent by such corporation; and

(b) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any of its obligations or covenants under any of the foregoing agreements.

Section 9.02. Rights and Duties of Successor Corporation. In case of any such merger, consolidation, sale or conveyance, and upon any such assumption by a successor corporation in accordance with Section 9.01, such successor corporation shall succeed to and be substituted for the Company with the same effect as if it had been named in the Purchase Contracts, the Corporate Units, the Treasury Units, the Cash Settled Units, this Agreement (including the Pledge provided for herein), and the Remarketing Agreement (if any), as the Company and (other than in the case of a lease) the Company shall be relieved of any further obligation under the Purchase Contracts, the Corporate Units, the Treasury Units, the Cash Settled Units, this Agreement (including the Pledge provided for herein), and the Remarketing Agreement (if any). Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of NiSource Inc. any or all of the Certificates evidencing Units issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Purchase Contract Agent; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Purchase Contract Agent shall authenticate and execute on behalf of the Holders as their

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attorney-in-fact and deliver any Certificates which previously shall have been signed and delivered by the officers of the Company to the Purchase Contract Agent for authentication and execution, and any Certificate evidencing Units which such successor corporation thereafter shall cause to be signed and delivered to the Purchase Contract Agent for that purpose. All the Certificates issued shall in all respects have the same legal rank and benefit under this Agreement as the Certificates theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Certificates had been issued at the date of the execution hereof. In case of any such merger, consolidation, sale or conveyance such change in phraseology and form (but not in substance) may be made in the Certificates evidencing Units thereafter to be issued as may be appropriate.

Section 9.03. Officer's Certificate and Opinion of Counsel Given to Purchase Contract Agent. The Purchase Contract Agent, subject to Section 7.01 and Section 7.03, shall receive an Officer's Certificate and an Opinion of Counsel and may rely thereon as conclusive evidence that any such merger, consolidation, sale or conveyance, and any such assumption, complies with the provisions of this Article 9 and that all conditions precedent to the consummation of any such merger, consolidation, sale or conveyance have been met.

## ARTICLE 10

### COVENANTS

Section 10.01. Performance under Purchase Contracts. The Company covenants and agrees for the benefit of the Holders from time to time of the Units that it will duly and punctually perform its obligations under the Purchase Contracts in accordance with the terms of the Purchase Contracts and this Agreement.

Section 10.02. Maintenance of Office or Agency. The Company will maintain in the contiguous United States an office or agency where Certificates may be presented or surrendered for acquisition of shares of Common Stock upon settlement of the Purchase Contracts on the Purchase Contract Settlement Date, or upon Early Settlement or Fundamental Change Early Settlement and for transfer of Collateral upon occurrence of a Termination Event, where Certificates may be surrendered for registration of transfer or exchange, or for a Collateral Substitution and where notices and demands to or upon the Company in respect of the Units and this Agreement may be served. The Company will give prompt written notice to the Purchase Contract Agent of the location, and any change in the location, of such office or agency. The Company initially designates the Corporate Trust Office of the Purchase Contract Agent as such office of the Company. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Purchase Contract Agent with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Purchase Contract Agent as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where Certificates may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the

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contiguous United States for such purposes. The Company will give prompt written notice to the Purchase Contract Agent of any such designation or rescission and of any change in the location of any such other office or agency. The Company hereby designates as the place of payment for the Units the Corporate Trust Office and appoints the Purchase Contract Agent at the Corporate Trust Office as paying agent in such city.

Section 10.03. Company to Reserve Common Stock. The Company shall at all times prior to the Purchase Contract Settlement Date reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock the full number of shares of Common Stock issuable against tender of payment in respect of all Purchase Contracts constituting a part of the Units evidenced by Outstanding Certificates (including the maximum number of Make-Whole Shares).

Section 10.04. Covenants as to Common Stock; Listing. (a) The Company covenants that all shares of Common Stock which may be issued against tender of payment in respect of, or in respect of any Contract Adjustment Payment on, any Purchase Contract constituting a part of the Outstanding Units will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable. The Company shall comply, in all material respects, with all applicable securities laws regulating the offer, issuance and delivery of shares of Common Stock upon settlement of, or in respect of any Contract Adjustment Payment on, Purchase Contracts and will issue such shares of Common Stock as freely-tradable shares, except to the extent holders thereof are underwriters (within the meaning of the Securities Act) or Affiliates of the Company.

(b) The Company further covenants that, if at any time the Common Stock shall be listed on the NYSE or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon settlement of, or issuable in respect of Contract Adjustment Payments on, Purchase Contracts; *provided, however*, that, if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Common Stock until the earlier of (i) the date on which any Purchase Contract is first settled in accordance with the provisions of this Agreement and (ii) the first payment of any Contract Adjustment Payment in shares of Common Stock, the Company covenants to list such Common Stock issuable upon the earlier of (x) settlement of the Purchase Contracts and (y) the first payment of any Contract Adjustment Payment in shares of Common Stock, in accordance with the requirements of such exchange or automated quotation system no later than at such time.

(c) The Company shall use its commercially reasonable efforts to effect the listing of the Corporate Units on the NYSE within 30 days of the date of the initial issuance of the Corporate Units.

Section 10.05. ERISA. Each Holder from time to time of the Units hereby represents that (a) the Holder is not purchasing the Units (and securities underlying the Units) with, or on behalf of, the assets of any Plan or (b) (i) the purchase, holding and disposition of the Units (and securities underlying the Units) satisfies ERISA's fiduciary standards and other requirements under ERISA, the Code or other similar requirements under any applicable laws, (ii) the

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purchase, holding and disposition of the Units (and the securities underlying the Units) will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or similar violation under any applicable laws; and (iii) neither the Company nor any of its Subsidiaries nor the Underwriters, are or will be deemed to be a fiduciary with respect to any Plan.

Section 10.06. Tax Treatment. The Company covenants and agrees, for United States federal income tax purposes, to (a) treat a Beneficial Owner's acquisition of the Corporate Units as the acquisition of the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and Purchase Contract constituting the Corporate Units, (b) treat such Applicable Ownership Interests in Mandatory Convertible Preferred Stock as equity of the Company, (c) allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and 0% to each Purchase Contract, which will establish each Beneficial Owner's initial tax basis in each Purchase Contract as \$0 and each Beneficial Owner's initial tax basis in each Applicable Ownership Interest in Mandatory Convertible Preferred Stock as \$100 and (d) treat each Beneficial Owner as the owner of the Collateral, including the Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Applicable Ownership Interests in the Treasury Portfolio, the Treasury Securities or the Cash, as applicable.

Section 10.07. Withholding. Notwithstanding anything to the contrary, the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Remarketing Agent and the Securities Intermediary, as applicable, shall have the right to deduct and withhold from any payment or distribution (or deemed distribution) made with respect to a Purchase Contract or any share of or Applicable Ownership Interest in Mandatory Convertible Preferred Stock (or the delivery of shares of Common Stock and/or cash upon conversion of Mandatory Convertible Preferred Stock or settlement of a Purchase Contract) or with respect to the Applicable Ownership Interests in the Treasury Portfolio or the Treasury Securities such amounts as are required to be deducted or withheld with respect to the making of such payment or distribution (or delivery) under applicable tax law without liability therefor. To the extent that any amounts are so deducted or withheld and remitted to the appropriate governmental entity, such deducted or withheld amounts shall be treated for all purposes as having been paid (or delivered) to the applicable Holder. In the event the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Remarketing Agent or the Securities Intermediary previously remitted any amounts to a governmental entity on account of taxes required to be deducted or withheld in respect of any payment or distribution (or deemed distribution) or delivery with respect to a Purchase Contract or any share of Mandatory Convertible Preferred Stock with respect to an applicable Holder, the Company, the Purchase Contract Agent, the Collateral Agent, the Custodial Agent, the Remarketing Agent or the Securities Intermediary, as applicable, shall be entitled to offset any such amounts against any amounts otherwise payable or deliverable to the applicable Holder hereunder or under any other instrument or agreement.

Section 10.08. Remarketing Agreement. On or prior to the date that is 20 days prior to the first day of the Final Remarketing Period or, if the Company shall have elected to conduct an Optional Remarketing, on or prior to the date that is 20 days prior to the first day of the Optional Remarketing Period, the Company shall have entered into, and shall have caused the Purchase Contract Agent and the Remarketing Agent to have entered into, the Remarketing Agreement.

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Section 10.09. Statements of Officers of the Company as to Default. The Company shall upon receiving a written request from any Holder delivered to the Company and the Purchase Contract Agent within 90 days after the end of any fiscal year of the Company (which fiscal year currently ends on December 31 of each year), deliver to the Purchase Contract Agent, within 120 days of the end of such fiscal year of the Company, an Officer's Certificate stating whether or not to the knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Agreement, the Units or the Purchase Contracts in any material respect and if the Company shall be in default in any material respect, specifying all such defaults and the nature and status thereof of which the signer may have knowledge.

## ARTICLE 11

### PLEDGE

Section 11.01. Pledge. Each Holder, acting through the Purchase Contract Agent as such Holder's attorney-in-fact, and the Purchase Contract Agent, acting solely as such attorney-in-fact, hereby pledges and grants to the Collateral Agent, as agent of and for the benefit of the Company, a continuing first priority perfected security interest in and to, and a lien upon and right of set-off against, all of such Person's right, title and interest in and to the Collateral, whether now existing or hereafter arising, to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations. The Collateral Agent shall have all of the rights, remedies and recourses with respect to the Collateral afforded a secured party by the UCC, in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Collateral Agent by this Agreement or under applicable law.

Section 11.02. Termination. As to each Holder, the Pledge created hereby shall terminate upon the satisfaction of such Holder's Obligations. Upon a Termination Event (and subject to the Collateral Agent's notification thereof by the Company), the Collateral Agent shall instruct the Securities Intermediary to Transfer such portion of the Collateral attributable to such Holder to the Purchase Contract Agent or Transfer Agent, as applicable, for distribution to such Holder in accordance with the terms provided for herein, free and clear of the Pledge created hereby. As promptly as practicable following the termination of the Pledge with respect to any Collateral pursuant to this Section 11.02 or any other provision of this Agreement, the Company shall terminate any UCC financing statements that have been filed that relate to such Collateral, and take any other action that the Purchase Contract Agent or any Holder reasonably requests, to evidence the termination of the Pledge, in each case, at the sole expense of the Company.



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**ARTICLE 12**

**ADMINISTRATION OF COLLATERAL**

Section 12.01. Initial Deposit of Mandatory Convertible Preferred Stock. (a) Prior to or concurrently with the execution and delivery of this Agreement, the Company shall cause the Transfer Agent to transfer, on behalf of the Purchase Contract Agent, through the applicable procedures of the Depository, for credit to the Collateral Account, the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and the shares of Mandatory Convertible Preferred Stock underlying such Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements relating thereto and the Securities Intermediary shall indicate by book-entry that a security entitlement with respect to such Applicable Ownership Interests in Mandatory Convertible Preferred Stock (and the shares of Mandatory Convertible Preferred Stock underlying such Applicable Ownership Interests in Mandatory Convertible Preferred Stock) has been credited to the Collateral Account.

(b) The Collateral Agent may, but shall not be obligated to, at any time or from time to time cause any or all securities or other property underlying any financial assets credited to the Collateral Account to be registered in the name of the Securities Intermediary, the Collateral Agent or their respective nominees.

Section 12.02. Establishment of Collateral Account. The Securities Intermediary hereby confirms that:

(a) the Securities Intermediary has established the Collateral Account;

(b) the Collateral Account is a securities account and a “securities account” as defined in Article 1(b) of the Hague Securities Convention;

(c) subject to the terms of this Agreement, the Securities Intermediary shall identify in its records the Collateral Agent as the entitlement holder entitled to exercise the rights that comprise any financial asset credited to the Collateral Account;

(d) all property delivered to the Securities Intermediary pursuant to this Agreement, including any Cash, Applicable Ownership Interests in the Treasury Portfolio or Treasury Securities and the Permitted Investments, shall be credited promptly to the Collateral Account;

(e) all securities or other property underlying any financial assets credited to the Collateral Account shall be (i) registered in the name of the Purchase Contract Agent and indorsed, without recourse or representation, to the Securities Intermediary or in blank, (ii) registered in the name of the Securities Intermediary or (iii) credited to another securities account maintained in the name of the Securities Intermediary. In no case shall any financial asset credited to the Collateral Account be registered in the name of the Purchase Contract Agent (in its capacity as such) or any Holder or specially indorsed to the Purchase Contract Agent (in its capacity as such) or any Holder, unless such financial asset has been further indorsed to the Securities Intermediary or in blank; and

(f) the Securities Intermediary is an “intermediary” (as defined in Article 1(c) of the Hague Securities Convention).

In addition, the Securities Intermediary hereby confirms and agrees that (i) it is a “securities intermediary” (as defined in Section 8-102(a)(14) of the UCC) in respect of the Collateral Account, and that all properties (except for Cash) credited to the Collateral Account shall be treated as “financial assets” (as defined in Section 8-102(a)(9) of the UCC), and (ii) with respect to all Cash held, credited, or carried by, in or to the Collateral Account, the Securities Intermediary shall maintain such Collateral Account as a “deposit account” within the meaning of Section 9-102 of the UCC. The Securities Intermediary confirms that it is acting as a bank within the meaning of Article 9 of the UCC with respect to any Cash that may be held, credited, or carried by or in the Collateral Account.

Section 12.03. Treatment as Financial Assets. Each item of property (whether investment property, financial asset, security or instrument, but other than Cash) credited to the Collateral Account shall be treated as a financial asset.

Section 12.04. Sole Control by Collateral Agent. Except as provided in Section 15.01, at all times prior to the termination of the Pledge, the Collateral Agent shall have sole control of the Collateral Account, and the Securities Intermediary shall take instructions and directions, and comply with entitlement orders, with respect to the Collateral Account or any financial asset or Cash credited thereto solely from the Collateral Agent as set forth in this Agreement. If at any time the Securities Intermediary shall receive an entitlement order from the Collateral Agent (acting on the written instruction of the Company) or a written instruction directing the disposition of funds in the Collateral Account issued by the Collateral Agent (acting on the written instruction of the Company) and relating to the Collateral Account, the Securities Intermediary shall comply with such entitlement order or instruction without further consent by the Purchase Contract Agent or any Holder or any other Person. Except as otherwise permitted under this Agreement, until termination of the Pledge, the Securities Intermediary shall not comply with any entitlement orders issued by the Purchase Contract Agent or any Holder.

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Section 12.05. Jurisdiction. The Collateral Account, and the rights and obligations of the Securities Intermediary, the Collateral Agent, the Purchase Contract Agent and the Holders with respect thereto, shall be governed by the laws of the State of New York. Regardless of any provision in any other agreement, for the purposes of the UCC the Securities Intermediary's jurisdiction is the State of New York. As permitted by Article 4 of the Hague Securities Convention, the parties hereto agree that the law of the State of New York shall govern each of the issues specified in Article 2(1) of the Hague Securities Convention. In addition, to the extent that any agreements between the Securities Intermediary and any other Person governing the Collateral Account (collectively, the "**Account Agreements**") do not provide that the laws of the State of New York shall govern all of the issues specified in Article 2(1) of the Hague Securities Convention, each Account Agreement is hereby amended to provide that the law applicable to all of the issues specified in Article 2(1) of the Hague Securities Convention shall be the laws of the State of New York. The Securities Intermediary represents that each Account Agreement (a) is governed by the laws of the State of New York and (b) if any Account Agreement expressly provides that a law is applicable to all the issues specified in Article 2(1) of the Hague Securities Convention, that law is the laws of the State of New York. At the time of its entry into the governing law provisions of this Agreement, the Securities Intermediary had an office located in the United States that was not a temporary office and that engaged in a business or other regular activity of maintaining securities accounts.

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Section 12.06. No Other Claims. Except for the interest of the Collateral Agent and of the Purchase Contract Agent and the Holders in the Collateral Account, the Securities Intermediary (without having conducted any investigation) does not know of any interest in the Collateral Account or in any Cash or financial asset credited thereto. If a Responsible Officer of the Securities Intermediary receives written notice that any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Collateral Account or in any Cash or financial asset carried therein, the Securities Intermediary shall promptly notify the Collateral Agent and the Purchase Contract Agent, and the Purchase Contract Agent shall notify the Company.

Section 12.07. Investment and Release.

(a) All proceeds of financial assets from time to time credited to the Collateral Account shall be invested and reinvested as provided in this Agreement. At all times prior to termination of the Pledge, no property shall be released from the Collateral Account except in accordance with this Agreement.

(b) In the event that any shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock are to be released from the Pledge following a Termination Event, Collateral Substitution, Successful Remarketing, Early Settlement or Fundamental Change Early Settlement (a “**Released Share**”), and the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock are represented by a physical certificate in the name of the Purchase Contract Agent held by the Collateral Agent (the “**Pledged Convertible Preferred Share**”), such release and delivery shall be evidenced by an endorsement by the Collateral Agent on the certificate held by the Collateral Agent reflecting a reduction in the number of shares of Mandatory Convertible Preferred Stock represented by such Pledged Convertible Preferred Share equal in amount (the “**Reduced Balance**”) to the number of the Released Shares. The Collateral Agent shall confirm any such Reduced Balance by sending via electronic mail or otherwise delivering a photocopy of such endorsement made on the Pledged Convertible Preferred Share evidencing such Reduced Balance to the Transfer Agent at the address of the Transfer Agent provided for notices to the Transfer Agent in this Agreement (or at such other address as the Transfer Agent shall provide to the Collateral Agent). Upon receipt of such confirmation, the Transfer Agent shall instruct the Custodial Agent in writing to increase the balance of a Global Preferred Share held by the Custodial Agent in an amount equal to the Reduced Balance by an endorsement made by the Custodial Agent on such Global Preferred Share to reflect such increase. In the event that a share of Mandatory Convertible Preferred Stock is transferred to the Collateral Agent pursuant to Section 3.14(a) or Section 3.15(a) (a “**Subjected Share**”) in connection with the recreation of Corporate Units, such transfer shall be evidenced by an endorsement by the Collateral Agent on the Pledged Convertible Preferred Share held by the Collateral Agent reflecting an increase in the balance of such Pledged Convertible Preferred Share equal in amount (the “**Increased Balance**”) to the number of such Subjected Shares. The Collateral Agent shall confirm any such Increased Balance by sending via electronic mail or otherwise delivering a photocopy of such endorsement made on the Pledged Convertible Preferred Share evidencing such Increased Balance to the Transfer Agent at the address of the Transfer Agent provided for notices to the Transfer Agent (or at such other address as the Transfer Agent shall provide to the Collateral Agent). Upon receipt of such confirmation, the Transfer Agent shall instruct the Custodial Agent in writing to decrease the balance of the Global Preferred Share held by the Custodial Agent in an amount equal to the Increased Balance by an endorsement made by the Custodial Agent on such Global Preferred Share to reflect such decrease. The release and delivery of any Released Share in the case where the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock are represented by a Global Preferred Share shall be effected by a transfer of such Released Share to an account at the Depository specified by the holder of such Released Share to the Purchase Contract Agent and Collateral Agent and otherwise in accordance with the terms of the relevant provision of this Agreement.

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Section 12.08. Treasury Securities. Promptly following receipt of the Treasury Securities in substitution of any Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock upon creation of Treasury Units, the Collateral Agent shall notify the Company of such receipt of Treasury Securities.

Section 12.09. Statements and Confirmations. The Securities Intermediary shall promptly send copies of all statements, confirmations and other correspondence concerning the Collateral Account and any Cash or financial assets credited thereto simultaneously to each of the Purchase Contract Agent and the Collateral Agent at their addresses for notices under this Agreement. The requirements of this Section 12.09 shall be performed by the Securities Intermediary by granting online read only access to the Collateral Account to the extent requested.

Section 12.10. Tax Allocations. To the extent required by law, the Purchase Contract Agent shall timely report all items of income, gain, expense and loss recognized in the Collateral Account to the Internal Revenue Service in the manner required by law. None of the Securities Intermediary, the Collateral Agent and the Custodial Agent shall have any tax reporting duties hereunder.

Section 12.11. No Other Agreements. The Securities Intermediary, acting solely in its capacity as Securities Intermediary, has not entered into, and prior to the termination of the Pledge shall not enter into, any agreement with any other Person relating to the Collateral Account or any Cash or financial assets credited thereto, including, without limitation, any agreement to comply with entitlement orders of any Person other than the Collateral Agent.

Section 12.12. Powers Coupled with an Interest. The rights and powers granted in this Agreement to the Collateral Agent have been granted in order to perfect its security interests in the Collateral Account, are powers coupled with an interest and will be affected neither by the bankruptcy of the Purchase Contract Agent or any Holder nor by the lapse of time. The obligations of the Securities Intermediary under this Agreement shall continue in effect until the termination of the Pledge.

Section 12.13. Waiver of Lien Waiver of Set-off. The Securities Intermediary waives any security interest, lien or right to make deductions or set-offs that it may now have or hereafter acquire in or with respect to the Collateral Account, any Cash or financial asset credited thereto or any security entitlement in respect thereof. Neither the Cash or financial assets credited to the Collateral Account nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Company.

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ARTICLE 13

**RIGHTS AND REMEDIES OF THE COLLATERAL AGENT**

Section 13.01. Rights and Remedies of the Collateral Agent. (a) In addition to the rights and remedies set forth herein or otherwise available at law or in equity, after a collateral event of default (as specified in Section 13.01(b) below) hereunder, the Collateral Agent shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and the TRADES Regulations and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted. Without limiting the generality of the foregoing, such remedies may include, to the extent permitted by applicable law, (1) retention of the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Pledged Treasury Securities, the Pledged Applicable Ownership Interests in the Treasury Portfolio and/or the Pledged Cash in full satisfaction of the Holders' obligations under the Purchase Contracts and the Purchase Contract Agreement and/or (2) sale of the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, the Pledged Treasury Securities or the Pledged Applicable Ownership Interests in the Treasury Portfolio in one or more public or private sales.

(b) Without limiting any rights or powers otherwise granted by this Agreement or under applicable law to the Collateral Agent, in the event the Collateral Agent is unable to make payments to the Company on account of Proceeds of (i) the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, (ii) Pledged Applicable Ownership Interests in the Treasury Portfolio, (iii) Pledged Cash or (iv) the Pledged Treasury Securities as provided in this Agreement in satisfaction of the Obligations of the Holder of the Units of which such Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, such Pledged Applicable Ownership Interests in the Treasury Portfolio, such Pledged Cash or such Pledged Treasury Securities are a part under the related Purchase Contracts, the inability to make such payments shall constitute a “**collateral event of default**” hereunder and the Collateral Agent shall, for the benefit of the Company, have and may exercise, with reference to such Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, Pledged Treasury Securities, Pledged Cash or Pledged Applicable Ownership Interests in the Treasury Portfolio, as applicable, any and all of the rights and remedies available to a secured party under the UCC and the TRADES Regulations after default by a debtor, and as otherwise granted herein or under any applicable law.

(c) Without limiting any rights or powers otherwise granted by this Agreement or under applicable law to the Collateral Agent, the Collateral Agent is hereby irrevocably authorized to receive, collect and apply to the satisfaction of the Obligations all payments with respect to (i) the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, (ii) the Pledged Treasury Securities, the (iii) Pledged Cash and (iv) the Pledged Applicable Ownership Interests in the Treasury Portfolio, subject, in each case, to the provisions of this Agreement, and as otherwise provided herein.

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(d) Subject to Section 7.04, the Purchase Contract Agent and each Holder agrees that, from time to time, upon the written request of the Company, the Purchase Contract Agent, on behalf of such Holder as its attorney-in-fact, shall execute and deliver such further documents and do such other acts and things as the Company may reasonably request in order to maintain the Pledge, and the perfection and priority thereof, and to confirm the rights of the Collateral Agent hereunder. The Purchase Contract Agent shall have no liability to any Holder for the maintenance of the Pledge or the perfection or priority hereof or for executing any documents or for taking any such acts requested by the Company hereunder, except for liability for its own grossly negligent acts, its own grossly negligent failure to act or its own willful misconduct.

(e) The Collateral Agent, the Securities Intermediary and the Custodial Agent shall be entitled to all of the rights, protections, privileges and immunities set forth in Article 7 for the benefit of the Purchase Contract Agent.

#### ARTICLE 14

##### **REPRESENTATIONS AND WARRANTIES TO COLLATERAL AGENT; HOLDER COVENANTS**

Section 14.01. Representations And Warranties. Each Holder from time to time, acting through the Purchase Contract Agent as attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any representation or warranty made by or on behalf of a Holder), hereby represents and warrants to the Collateral Agent and the Company (with respect to such Holder's interest in the Collateral), which representations and warranties shall be deemed repeated on each day a Holder effects a Transfer of Collateral, that:

(a) such Holder has the power to grant a security interest in and lien on the Collateral;

(b) such Holder is the sole beneficial owner of the Collateral and, in the case of Collateral delivered in physical form, is the sole holder of such Collateral and is the sole beneficial owner of, or has the right to Transfer, the Collateral it Transfers to the Collateral Agent for credit to the Collateral Account, free and clear of any security interest, lien, encumbrance, call, liability to pay money or other restriction other than the security interest and lien granted under Article 11;

(c) upon the Transfer of the Collateral to the Securities Intermediary for credit to the Collateral Account, the Collateral Agent, for the benefit of the Company, will have a valid and perfected first priority security interest therein (assuming that any central clearing operation or any securities intermediary or other entity not within the control of the Holder involved in the Transfer of the Collateral, including the Collateral Agent and the Securities Intermediary, gives the notices and takes the action required of it hereunder and under applicable law for perfection of that interest and assuming the establishment and exercise of control pursuant to Article 12 hereof); and

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(d) the execution and performance by the Holder of its obligations under this Agreement will not result in the creation of any security interest, lien or other encumbrance on the Collateral (other than the security interest and lien granted under Article 11 hereof) or violate any provision of any existing law or regulation applicable to it or of any mortgage, charge, pledge, indenture, contract or undertaking to which it is a party or which is binding on it or any of its assets.

Section 14.02. Covenants. The Purchase Contract Agent and the Holders from time to time, acting through the Purchase Contract Agent as their attorney-in-fact (it being understood that the Purchase Contract Agent shall not be liable for any covenant made by or on behalf of a Holder), hereby covenant to the Collateral Agent and the Company that for so long as the Collateral remains subject to the Pledge:

(a) neither the Purchase Contract Agent nor such Holders will create or purport to create or allow to subsist any mortgage, charge, lien, pledge or any other security interest whatsoever over the Collateral or any part of it other than pursuant to this Agreement; and

(b) neither the Purchase Contract Agent nor such Holders will sell or otherwise dispose (or attempt to dispose) of the Collateral or any part of it except for the beneficial interest therein, subject to the Pledge hereunder, transferred in connection with a Transfer of the Units.

## ARTICLE 15

### **THE COLLATERAL AGENT, THE CUSTODIAL AGENT AND THE SECURITIES INTERMEDIARY**

It is hereby agreed as follows:

Section 15.01. Appointment, Powers and Immunities. The Company hereby appoints U.S. Bank to act on its behalf as the Collateral Agent, the Custodial Agent and the Securities Intermediary hereunder, and the Company hereby (i) authorizes each of the Collateral Agent, the Custodial Agent and the Securities Intermediary to take such actions on its behalf and to exercise such powers on its behalf as are delegated to the Collateral Agent, the Custodial Agent and the Securities Intermediary by the terms hereof and (ii) authorizes and directs the Collateral Agent to take such actions as from time to time shall be required of the Collateral Agent under the terms of this Agreement and the Certificate of Designations. The Collateral Agent, the Custodial Agent and the Securities Intermediary each hereby agrees to act in its respective capacity as such upon the express conditions contained herein. The Company accepts the authorizations, appointments, acknowledgments and other actions taken by the Collateral Agent, the Custodial Agent and the Securities Intermediary in accordance with this Agreement. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall act solely as agent for the Company hereunder (and not as a fiduciary), shall not assume any obligation or relationship of agency or

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trust for or with any of the Holders, except for the obligations owed by a pledgee of property to the owner of the property under this Agreement and applicable law, and shall have such powers as are specifically vested in the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, by the terms of this Agreement. Each Agent's duties hereunder and under the other documents executed in connection herewith are solely ministerial and administrative in nature. The Collateral Agent, the Custodial Agent and Securities Intermediary shall:

(a) have no duties, responsibilities, covenants or obligations except those expressly set forth in this Agreement and no implied covenants, functions, responsibilities, duties, liabilities or obligations shall be inferred from this Agreement against the Collateral Agent, the Custodial Agent or the Securities Intermediary, nor shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be bound by the provisions of any agreement by any party hereto beyond the specific terms hereof and none of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have any fiduciary duty to the Holders or any other Person, and in acting hereunder, the Collateral Agent, Custodial Agent and Securities Intermediary shall act solely as an agent of the Company and will not thereby assume any obligations towards or relationship of agency or trust for or with any of the Holders or any other third party;

(b) not be responsible for any recitals contained in this Agreement, or in any certificate or other document referred to or provided for in, or received by it under, this Agreement or the Units, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement (other than as against the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be), the Units, any Collateral or any other document referred to or provided for herein or therein or for any failure by the Company or any other Person (except the Collateral Agent, the Custodial Agent or Securities Intermediary, as the case may be) to perform any of its obligations hereunder or thereunder or, for the perfection, priority or maintenance of any security interest created hereunder;

(c) not be required to initiate or conduct any litigation or collection proceedings hereunder (except pursuant to directions furnished under Section 15.02 hereof, subject to Section 15.08 hereof);

(d) not be responsible or liable for any action taken or omitted to be taken by it hereunder or under any other document or instrument referred to or provided for herein or in connection herewith or therewith or for any loss or injury resulting from its actions or its performance of its duties hereunder, except for its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction;

(e) not be required to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder;



(f) not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Collateral Agent, the Custodial Agent or the Securities Intermediary (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); and

(g) the obligations of the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary under this Agreement are several and not joint.

Subject to the foregoing, during the term of this Agreement, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall take all reasonable action in connection with the safekeeping and preservation of the Collateral hereunder as determined by industry standards. The Collateral Agent, the Securities Intermediary and the Custodial Agent shall not be responsible for and make no representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any security document, or for the creation, perfection, filing, priority, sufficiency or protection of any liens securing the Mandatory Convertible Preferred Stock and the Collateral.

The Collateral Agent, the Custodial Agent and the Securities Intermediary shall only be responsible for transferring money, securities or other property in accordance with the terms herein to the extent that such money, securities or other property is credited to the Collateral Account.

No provision of this Agreement or any Certificate shall require the Collateral Agent, the Custodial Agent or the Securities Intermediary to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties or the exercise of any of its rights or powers hereunder. In no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary be liable for any amount in excess of the Value of the Collateral.

Section 15.02. Instructions of the Company. The Company shall have the right, by one or more written instruments executed and delivered to the Collateral Agent, to direct the time, method and place of conducting any proceeding for the realization of any right or remedy available to the Collateral Agent, or of exercising any power conferred on the Collateral Agent, or to direct the taking or refraining from taking of any action authorized by this Agreement; *provided, however*, that (a) such direction shall not conflict with the provisions of any law or of this Agreement or involve the Collateral Agent in personal liability and (b) the Collateral Agent shall be indemnified and/or provided with security to its satisfaction as provided herein. Nothing contained in this Section 15.02 shall impair the right of the Collateral Agent to take any action or omit to take any action which it deems proper and which is not inconsistent with such direction. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary has any obligation or responsibility to file UCC financing or continuation statements or amendments or to take any other actions to create, preserve or maintain the security interest in the Collateral.

Section 15.03. Reliance by Collateral Agent, Custodial Agent and Securities Intermediary. Each of the Securities Intermediary, the Custodial Agent and the Collateral Agent (solely for purposes of this paragraph, the “**Agents**”) shall be entitled to rely conclusively upon any certification, order, judgment, opinion, notice or other written communication (including, without limitation, any thereof by e-mail or similar electronic means, telecopy or facsimile)

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believed by it in good faith to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons (without being required to determine the correctness of any fact stated therein) and consult with and conclusively rely upon advice, opinions and statements of legal counsel and other experts selected by the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, in each case, at the expense of the Company. As to any matters not expressly provided for by this Agreement, the Collateral Agent, the Custodial Agent and the Securities Intermediary shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions given by the Company or the Holders, as the case may be, or by another Agent, as the case may be, in accordance with the terms of this Agreement; *provided, however*, it is understood that in all cases the Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such direction from the Company or the Holders (acting in accordance with this Agreement) or from another Agent (acting in accordance with this Agreement), as such Agent deems appropriate. This provision is intended solely for the benefit of the Agents and their successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

In each case that the Collateral Agent, the Custodial Agent or the Securities Intermediary may or is required hereunder to take any action, including without limitation to make any determination or judgment, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder, the Collateral Agent, the Custodial Agent or Securities Intermediary may seek direction from the Company. The Collateral Agent, the Custodial Agent or Securities Intermediary shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction from the Company. Unless direction or otherwise is expressly provided herein, if the Collateral Agent, the Custodial Agent or the Securities Intermediary shall request direction from the Company with respect to any action, the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be entitled to refrain from such action unless and until such agent shall have received direction from the Company, and the agent shall not incur liability to any Person by reason of so refraining.

Section 15.04. Certain Rights. (a) Whenever in the administration of the provisions of this Agreement the Collateral Agent, the Custodial Agent or the Securities Intermediary shall deem it necessary or desirable that a matter be proved or established prior to taking, or omitting to take, or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, bad faith or willful misconduct on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, be deemed to be conclusively proved and established by an Officer's Certificate, and delivered to the Collateral Agent, the Custodial Agent or the Securities Intermediary and such certificate, in the absence of bad faith on the part of the Collateral Agent, the Custodial Agent or the Securities Intermediary, shall be full warrant to the Collateral Agent, the Custodial Agent or the Securities Intermediary for any action taken, suffered or omitted by it under the provisions of this Agreement upon the faith thereof.

(b) The Collateral Agent, the Custodial Agent or the Securities Intermediary shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document.

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(c) The authorizations, rights, privileges, protections and benefits given to each of the Collateral Agent, the Custodial Agent or the Securities Intermediary are extended to, and shall be enforceable by, each such Collateral Agent, the Custodial Agent or the Securities Intermediary, under any document to which it is a party (as applicable). In the event any claim of inconsistency between this Agreement and the terms of any other document arises with respect to the duties, liabilities and rights of the Collateral Agent, the Custodial Agent or the Securities Intermediary, the terms of this Agreement shall control.

Section 15.05. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Collateral Agent, the Custodial Agent or the Securities Intermediary may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be the successor of the Collateral Agent, the Custodial Agent or the Securities Intermediary, *provided* such Person shall be otherwise qualified and eligible under this Article 15 hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

Section 15.06. Rights in Other Capacities. The Collateral Agent, the Custodial Agent and the Securities Intermediary and their affiliates may (without having to account therefor to the Company) accept deposits from, lend money to, make their investments in and generally engage in any kind of banking, trust or other business with the Company, the Purchase Contract Agent, any other Person interested herein and any Holder (and any of their respective subsidiaries or affiliates) as if it were not acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, and the Collateral Agent, the Custodial Agent, the Securities Intermediary and their affiliates may accept fees and other consideration from the Company, the Purchase Contract Agent and any Holder without having to account for the same to the Company; *provided* that each of the Collateral Agent, the Custodial Agent and the Securities Intermediary covenants and agrees with the Company that it shall not accept, receive or permit there to be created in favor of itself and shall take no affirmative action to permit there to be created in favor of any other Person, any security interest, lien or other encumbrance of any kind in or upon the Collateral other than the lien created by the Pledge.

Section 15.07. Non-reliance on the Collateral Agent, Custodial Agent and Securities Intermediary. None of the Collateral Agent, the Custodial Agent and the Securities Intermediary shall be required to keep itself informed as to the performance or observance by the Purchase Contract Agent or any Holder of this Agreement, the Units or any other document referred to or provided for herein or therein or to inspect the properties or books of the Purchase Contract Agent or any Holder. None of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have any duty or responsibility to provide the Company with any credit or other information concerning the affairs, financial condition or business of the Purchase Contract Agent or any Holder (or any of their respective affiliates) that may come into the possession of the Collateral Agent, the Custodial Agent or the Securities Intermediary or any of their respective affiliates.

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Section 15.08. Compensation And Indemnity. The Company agrees to:

(a) pay the Collateral Agent, the Custodial Agent and the Securities Intermediary from time to time such compensation as shall be agreed in writing between the Company and the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, for all services rendered by them hereunder;

(b) indemnify and hold harmless the Collateral Agent, the Custodial Agent, the Securities Intermediary and each of their respective affiliates, directors, officers, agents and employees (collectively, the “**Pledge Indemnitees**”), from and against any and all claims (whether asserted by the Company, the Purchase Contract Agent or any other Person), liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and reasonable expenses (including reasonable fees and expenses of counsel) (collectively, “**Losses**” and individually, a “**Loss**”) that may be imposed on, incurred by, or asserted against, the Pledge Indemnitees or any of them for following any instructions, acting upon any notices or other directions (which shall include an instruction, notice or direction not to act) upon which any of the Collateral Agent, the Custodial Agent or the Securities Intermediary is entitled to conclusively rely pursuant to the terms of this Agreement, *provided* that the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct (as adjudicated by a court of competent jurisdiction in a final, non-appealable decision) with respect to the specific Loss against which indemnification is sought; and

(c) in addition to and not in limitation of Section 15.08(b), indemnify and hold the Pledge Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by or asserted against, the Pledge Indemnitees or any of them in connection with or arising out of the Collateral Agent’s, the Custodial Agent’s or the Securities Intermediary’s acceptance or performance of its rights, powers and duties under this Agreement, including but not limited to the rights and powers set forth in Section 15.09, *provided* the Collateral Agent, the Custodial Agent or the Securities Intermediary has not acted with gross negligence or engaged in willful misconduct (as adjudicated by a court of competent jurisdiction in a final, non-appealable decision) with respect to the specific Loss against which indemnification is sought, including the Pledge Indemnitee’s reasonable out-of-pocket costs and expenses of defending themselves against any claim or liability (whether asserted by the Company, any holder of Units, or otherwise) in connection with the exercise or performance of any of the Collateral Agent’s, the Custodial Agent’s or Securities Intermediary’s powers or duties hereunder or thereunder or of enforcing the provisions of this Section 15.08 and Section 15.14.

The provisions of this Section 15.08 and Section 15.14 shall survive the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary and the termination of this Agreement.

Section 15.09. Failure to Act. In the event that, in the good faith belief of the Collateral Agent, the Custodial Agent or the Securities Intermediary, an ambiguity in the provisions of this Agreement arises or any actual dispute between or conflicting claims by or among the parties hereto or any other Person with respect to any funds or property deposited hereunder has been asserted in writing, then at its sole option, each of the Collateral Agent, the Custodial Agent and

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the Securities Intermediary shall be entitled, after prompt notice to the Company and the Purchase Contract Agent, to refuse to comply with any and all claims, demands or instructions with respect to such property or funds so long as such dispute or conflict shall continue, and the Collateral Agent, the Custodial Agent and the Securities Intermediary, as the case may be, shall not be or become liable in any way to any of the parties hereto for its failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall be entitled to refuse to act until either:

(a) such conflicting or adverse claims or demands shall have been finally determined by a court of competent jurisdiction or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Collateral Agent, the Custodial Agent or the Securities Intermediary; or

(b) the Collateral Agent, the Custodial Agent or the Securities Intermediary shall have received security and/or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all loss, claim, liability or reasonable out-of-pocket expense which it may without gross negligence or willful misconduct incur by reason of its acting.

The Collateral Agent, the Custodial Agent and the Securities Intermediary may in addition elect to commence an interpleader action or seek other judicial relief or orders as the Collateral Agent, the Custodial Agent or the Securities Intermediary may deem necessary. Notwithstanding anything contained herein to the contrary, none of the Collateral Agent, the Custodial Agent or the Securities Intermediary shall be required to take any action that is in its opinion contrary to law or to the terms of this Agreement, or which would in its opinion subject it or any of its officers, employees or directors to liability.

Section 15.10. Resignation of Collateral Agent, the Custodial Agent and the Securities Intermediary. (a) Subject to the appointment and acceptance of a successor Collateral Agent, Custodial Agent or Securities Intermediary as provided below:

(i) the Collateral Agent, the Custodial Agent or the Securities Intermediary may resign at any time by giving notice thereof to the Company and the Purchase Contract Agent as attorney-in-fact for the Holders;

(ii) the Collateral Agent, the Custodial Agent or the Securities Intermediary may be removed at any time by the Company upon written notice thereof; and

(iii) if the Collateral Agent, the Custodial Agent or the Securities Intermediary fails to perform any of its material obligations hereunder in any material respect for a period of not less than 20 calendar days after receiving written notice of such failure by the Purchase Contract Agent and such failure shall be continuing, the Collateral Agent, the Custodial Agent and the Securities Intermediary may be removed by the Purchase Contract Agent, acting at the direction of the Holders of a majority in number of the Outstanding Units.

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The Purchase Contract Agent shall promptly notify the Company upon the transmission of notice as contemplated by Section 15.10(a)(iii) and any removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary pursuant to Section 15.10(a)(iii). Upon any such resignation or removal, the Company shall have the right to appoint a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be. If no successor Collateral Agent, Custodial Agent or Securities Intermediary shall have been so appointed and shall have accepted such appointment within 45 calendar days after the retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's giving of notice of resignation or the Company's or the Purchase Contract Agent's giving notice of such removal, then the retiring or removed Collateral Agent, Custodial Agent or Securities Intermediary may petition any court of competent jurisdiction, at the expense of the Company, for the appointment of a successor Collateral Agent, Custodial Agent or Securities Intermediary. The Collateral Agent, the Custodial Agent and the Securities Intermediary shall each be a bank, banking corporation or a national banking association which has an office (or an agency office) in New York City with a combined capital and surplus of at least \$50,000,000. Upon the acceptance of any appointment as Collateral Agent, Custodial Agent or Securities Intermediary hereunder by a successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, such successor Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, and the retiring Collateral Agent, Custodial Agent or Securities Intermediary, as the case may be, shall take all appropriate action, subject to payment of any amounts then due and payable to it hereunder, to transfer any money and property held by it hereunder (including the Collateral) to such successor. The retiring Collateral Agent, Custodial Agent or Securities Intermediary shall, upon such succession, be discharged from its duties and obligations as Collateral Agent, Custodial Agent or Securities Intermediary hereunder. After any retiring Collateral Agent's, Custodial Agent's or Securities Intermediary's resignation hereunder as Collateral Agent, Custodial Agent or Securities Intermediary, the provisions of this Article 15 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary. Any resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary hereunder, at a time when such Person is also acting as the Collateral Agent, the Custodial Agent or the Securities Intermediary, as the case may be, shall be deemed for all purposes of this Agreement as the simultaneous resignation or removal of the Collateral Agent, the Securities Intermediary or the Custodial Agent, as the case may be.

Section 15.11. Right to Appoint Agent or Advisor. The Collateral Agent shall have the right to appoint agents or advisors in connection with any of its duties hereunder, and the Collateral Agent shall not be liable for any action taken or omitted by, or in conclusive reliance upon the advice of, such agents or advisors selected in good faith.

Section 15.12. Survival. The provisions of this Article 15 shall survive termination of this Agreement and the resignation or removal of the Collateral Agent, the Custodial Agent or the Securities Intermediary.

Section 15.13. Exculpation. Anything contained in this Agreement to the contrary notwithstanding, in no event shall the Collateral Agent, the Custodial Agent or the Securities Intermediary or their officers, directors, employees or agents be liable under this Agreement for indirect, special, punitive, or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, goodwill, reputation, business opportunity or anticipated saving, whether or not the likelihood of such loss or damage was known to the Collateral Agent, the Custodial Agent or the Securities Intermediary, or any of them and regardless of the form of action.

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Section 15.14. Expenses, Etc. The Company agrees to reimburse the Collateral Agent, the Custodial Agent and the Securities Intermediary for:

(a) all reasonable out-of-pocket costs and expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, the reasonable fees and expenses of counsel to the Collateral Agent, the Custodial Agent and the Securities Intermediary), in connection with (i) the negotiation, preparation, execution and delivery or performance of this Agreement and (ii) any modification, supplement or waiver of any of the terms of this Agreement;

(b) all costs, fees and expenses of the Collateral Agent, the Custodial Agent and the Securities Intermediary (including, without limitation, reasonable fees and expenses of counsel) in connection with (i) any enforcement or proceedings resulting or incurred in connection with causing any Holder to satisfy its obligations under the Purchase Contracts forming a part of the Units and (ii) the enforcement of this Section 15.14 and Section 15.08;

(c) all transfer, stamp, documentary or other similar taxes, assessments or charges (including any interest and penalties thereon or in connection therewith) levied by any governmental or revenue authority in respect of this Agreement or any other document referred to herein and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated hereby; and

(d) all reasonable fees and expenses of any agent or advisor appointed by the Collateral Agent.

## ARTICLE 16

### MISCELLANEOUS

Section 16.01. Company to Furnish Purchase Contract Agent Names and Addresses of Holders. (a) The Company shall furnish or cause to be furnished to the Purchase Contract Agent (i) semiannually, not later than February 15 and August 15 in each year, commencing August 15, 2021, a list, in such form as the Purchase Contract Agent may reasonably require, of the names and addresses of the Holders of Units as of a date not more than 15 calendar days prior to the delivery thereof, and (ii) at such other times as the Purchase Contract Agent may request in writing, within 30 calendar days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 calendar days prior to the time such list is furnished, excluding from any such list names and addresses previously received by the Purchase Contract Agent.

Section 16.02. Preservation of Information; Communications to Holders. The Purchase Contract Agent shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Purchase Contract Agent as provided in Section 16.01(a) and the names and addresses of Holders received by the Purchase Contract Agent. The Purchase Contract Agent may dispose of any list furnished to it as provided in Section 16.01(a) upon receipt of a new list so furnished.

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Section 16.03. Defaults, Waiver. The Holders of a majority of the Outstanding Purchase Contracts voting together as one class may, by vote or consent, on behalf of all of the Holders, waive any past default by the Company and its consequences, except a default:

(a) in the payment on any Purchase Contract, or

(b) in respect of a provision hereof which under Section 8.02 cannot be modified or amended without the consent of the Holder of each Outstanding Purchase Contract affected.

Upon such waiver, any such default shall cease to exist, and any default by the Company arising therefrom shall be deemed to have been cured, for every purpose of this Agreement, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 16.04. Purchase Contract Agent's Knowledge of Defaults. The Purchase Contract Agent shall not be deemed to have notice or be charged with knowledge of any Fundamental Change, Termination Event or any default hereunder unless a Responsible Officer of the Purchase Contract Agent has received written notice from the Company or any Holder of such Fundamental Change, Termination Event or default at the Corporate Trust Office of the Purchase Contract Agent, and such notice references the Company, the Units and this Agreement and identifies such default.

Section 16.05. Security Interest Absolute. All rights of the Collateral Agent and security interests hereunder, and all obligations of the Holders from time to time hereunder pursuant to the Pledge, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of any provision of the Purchase Contracts or the Units or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or any other term of, or any increase in the amount of, all or any of the obligations of Holders of the Units under the related Purchase Contracts, or any other amendment or waiver of any term of, or any consent to any departure from any requirement of, this Agreement or any Purchase Contract or any other agreement or instrument relating thereto; or

(c) any other circumstance which might otherwise constitute a defense available to, or discharge of, a borrower, a guarantor or a pledgor.

Section 16.06. Notice of Termination Event. Upon the occurrence of a Termination Event, the Company shall deliver written notice to the Purchase Contract Agent, the Collateral Agent and the Securities Intermediary.



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Section 16.07. U.S.A. Patriot Act. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States (“**Applicable AML Law**”), the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary. Accordingly, each of the parties agree to provide to the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, upon their request from time to time such identifying information and documentation as may be available for such party in order to enable the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary to comply with Applicable AML Law.

[SIGNATURES ON THE FOLLOWING PAGES]

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

**NISOURCE INC.**

By: /s/ Randy G. Hulen

Name: Randy G. Hulen

Title: Vice President, Investor Relations and Treasurer

Address for Notices:

NiSource Inc.  
801 East 86<sup>th</sup> Avenue,  
Merrillville, Indiana  
46410  
Attention: Randy Hulen

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

U.S. Bank National Association, as Purchase Contract Agent,  
attorney-in-fact of the Holders from time to time of the Units,  
Collateral Agent, Custodial Agent and Securities Intermediary

By: /s/ Laurel Casasanta  
Name: Laurel Casasanta  
Title: Vice President

Address for Notices:

U.S. Bank National Association  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

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**EXHIBIT A**

**(FORM OF FACE OF CORPORATE UNITS CERTIFICATE)**

[For inclusion in Global Certificates only—THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS NOMINEE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”), THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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No. R-  
Number of Corporate Units:

CUSIP No. 65473P 121  
ISIN No. US65473P1214

NISOURCE INC.

Series A Corporate Units

This Corporate Units Certificate certifies that [ ] is the registered Holder of the number of Corporate Units set forth above [For inclusion in Global Certificates only—or such other number of Corporate Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto], which number, taken together with the number of all other Outstanding Corporate Units and the number of all Outstanding Treasury Units and Outstanding Cash Settled Units, shall not exceed 8,625,000. Each Corporate Unit consists of (i) an Applicable Ownership Interest in Mandatory Convertible Preferred Stock or an Applicable Ownership Interest in the Treasury Portfolio, subject to the Pledge thereof by such Holder pursuant to the Purchase Contract and Pledge Agreement and (ii) the rights and obligations of the Holder under one Purchase Contract with the Company.

All capitalized terms used herein without definition herein and that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meaning set forth therein.

In the event of any inconsistency between the provisions of this Corporate Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Applicable Ownership Interest in Mandatory Convertible Preferred Stock or the Applicable Ownership Interest in the Treasury Portfolio, as the case may be, constituting part of each Corporate Unit evidenced hereby has been pledged to the Collateral Agent, for the benefit of the Company, to secure the obligations of the Holder under the Purchase Contract comprising part of such Corporate Unit.

All payments, if any, with respect to the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or all payments with respect to the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, constituting part of the Corporate Units shall be paid on the dates and in the manner set forth in the Purchase Contract and Pledge Agreement.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Corporate Unit evidenced hereby, an amount (the “**Contract Adjustment Payments**”) equal to 7.75% per year of the Stated Amount for the period from and including the immediately preceding Contract Adjustment Payment Date on which Contract Adjustment Payments were paid (or if none, April 19, 2021) to but excluding such Contract Adjustment Payment Date. Such Contract Adjustment Payments shall be payable in cash, shares of Common Stock or a combination thereof, at the Company’s election, to the Person in whose name this Corporate Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company’s existing and future Indebtedness.

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Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a Purchase Price equal to the Stated Amount, a number of newly-issued shares of Common Stock of the Company, equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of payment received in the Final Remarketing of the shares of Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock equal to \$1,000 per each such share thereof or the Proceeds of the Pledged Applicable Ownership Interests in the Treasury Portfolio, as the case may be, pledged to secure the obligations under such Purchase Contract of the Holder of the Corporate Units of which such Purchase Contract is a part.

If the book-entry system for the Corporate Units has been terminated, the Contract Adjustment Payments paid in cash will be payable, at the option of the Company, by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or by wire transfer to the account designated by such Person by prior written notice to the Purchase Contract Agent, given at least ten calendar days prior to the Contract Adjustment Payment Date.

Each Purchase Contract evidenced hereby obligates the Holder and the Beneficial Owner to agree, for United States federal income tax purposes, to (i) treat the Beneficial Owner's acquisition of the Corporate Units as an acquisition of the Mandatory Convertible Preferred Stock and Purchase Contract constituting each Corporate Unit, (ii) treat the Applicable Ownership Interests in Mandatory Convertible Preferred Stock as equity of the Company (iii) allocate, as of the date hereof, 100% of the purchase price for a Corporate Unit to the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and 0% to each Purchase Contract, which will establish the Beneficial Owner's initial tax basis in each Purchase Contract as \$0 and the Beneficial Owner's initial tax basis in each Applicable Ownership Interest in Mandatory Convertible Preferred Stock as \$100 and (iv) treat the Beneficial Owner as the owner of the applicable interests in the Collateral Account, including the Mandatory Convertible Preferred Stock.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual or electronic signature, this Corporate Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such  
Holder under the Purchase Contracts)

By: U.S. Bank National Association, not individually but  
solely as attorney-in-fact of such Holder

By: \_\_\_\_\_  
Name:  
Title:

DATED:

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CERTIFICATE OF AUTHENTICATION  
OF PURCHASE CONTRACT AGENT

This is one of the Corporate Units Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

U.S. Bank National Association, as Purchase Contract Agent

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

DATED:



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(REVERSE OF CORPORATE UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by a Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (as may be supplemented from time to time, the “**Purchase Contract and Pledge Agreement**”), between the Company and U.S. Bank National Association, as Purchase Contract Agent (in such capacity, including its successors thereunder, the “**Purchase Contract Agent**”), and as Collateral Agent, Custodial Agent and Securities Intermediary (in such capacities, including its successors thereunder, the “**Collateral Agent**”), to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Collateral Agent, the Company, and the Holders and of the terms upon which the Corporate Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Corporate Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred.

No fractional shares of Common Stock will be issued upon settlement of Purchase Contracts, as provided in Section 5.07 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Corporate Units to purchase at the Purchase Price, and the Company to sell, a number of newly-issued shares of Common Stock determined pursuant to the Purchase Contract and Pledge Agreement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, unless a Termination Event shall have occurred, the Holder of this Corporate Units Certificate shall pay the Purchase Price for the shares of Common Stock to be purchased pursuant to each Purchase Contract evidenced hereby by effecting an Early Settlement or, if applicable, a Fundamental Change Early Settlement or from the proceeds of the Applicable Ownership Interests in the Treasury Portfolio or from the proceeds of the Final Remarketing of the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock.

As provided in the Purchase Contract and Pledge Agreement, upon the occurrence of an Unsuccessful Final Remarketing as of the Purchase Contract Settlement Date, each Holder of any Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock shall be deemed to have automatically delivered the related Mandatory Convertible Preferred Stock to the Company in satisfaction of such Holder’s obligations under the related Purchase Contracts, as described in Section 5.02(b)(viii) of the Purchase Contract and Pledge Agreement, unless such Holder elects otherwise.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

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Each Purchase Contract evidenced hereby and all obligations and rights of the Company and the Holder thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall terminate if a Termination Event shall occur. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent, the Collateral Agent and to the Holders, at their addresses as they appear in the Security Register. Upon and after the occurrence of a Termination Event, the Collateral Agent shall release the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio forming a part of each Corporate Unit from the Pledge. A Corporate Unit shall thereafter represent the right to receive the Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interest in Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio in accordance with the terms of the Purchase Contract and Pledge Agreement.

Under the terms of the Purchase Contract and Pledge Agreement, the Purchase Contract Agent will be entitled to exercise the voting and any other consensual rights pertaining to the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock, but only to the extent instructed in writing by the Holders. Upon receipt of notice of any meeting at which holders of Mandatory Convertible Preferred Stock are entitled to vote or upon any solicitation of consents, waivers or proxies of holders of Mandatory Convertible Preferred Stock, the Purchase Contract Agent shall, as soon as practicable thereafter, mail, first class, postage pre-paid, to the Holders of Corporate Units the notice required by the Purchase Contract and Pledge Agreement.

The Corporate Units Certificates are issuable only in registered form and only in denominations of a single Corporate Unit and any integral multiple thereof. The transfer of any Corporate Units Certificate will be registered and Corporate Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Treasury Securities or Cash for the Mandatory Convertible Preferred Stock thereby creating Treasury Units or Cash Settled Units, shall be responsible for any taxes, governmental charges or other fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Corporate Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Corporate Unit in respect of the Mandatory Convertible Preferred Stock and Purchase Contract constituting such Corporate Unit may be transferred and exchanged only as a Corporate Unit.

Subject to, and in compliance with, the conditions and terms set forth in the Purchase Contract and Pledge Agreement, the Holder of Corporate Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Treasury Securities secure the Holder's obligations under the Purchase Contract shall be referred to as a "**Treasury Unit**", and each Unit for which Pledged Cash secures the Holder's obligations under the Purchase Contract shall be referred to as a "**Cash Settled Unit**". A Holder may make such Collateral Substitution only in integral multiples of 10 Corporate Units for 10 Treasury Units or 10 Cash Settled Units, as the case may be.

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Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement or a Fundamental Change Early Settlement as provided in the Purchase Contract and Pledge Agreement.

Upon registration of transfer of this Corporate Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement), under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Corporate Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Corporate Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform the related Purchase Contracts forming part of the Corporate Units evidenced hereby, the Purchase Contract and Pledge Agreement and the Remarketing Agreement identified therein, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time (the "**Remarketing Agreement**"), on its behalf and in its name as its attorney-in-fact and the Holder of this Corporate Units Certificate hereby authorizes the Purchase Contract Agent to take such actions on its behalf and to exercise such powers as are delegated to the Purchase Contract Agent by the terms of the Purchase Contract and Pledge Agreement, the Remarketing Agreement, or under any other document or instrument referred to or provided for herein or in connection herewith; expressly withholds any consent to the assumption (i.e., affirmance) of the Purchase Contracts by the Company or its trustee in the event that the Company becomes the subject of a case under the Bankruptcy Code, agrees to be bound by the terms and provisions thereof and the Corporate Units evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract and Pledge Agreement) for so long as it remains of a Holder of such Unit, covenants and agrees to perform its obligations under such Purchase Contracts, consents to the provisions of the Purchase Contract and Pledge Agreement, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract and Pledge Agreement on its behalf as its attorney-in-fact, and consents to the Pledge of the Applicable Ownership Interests in Mandatory Convertible Preferred Stock and the underlying Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, underlying this Corporate Units Certificate pursuant to the Purchase Contract and Pledge Agreement. The Holder further covenants and agrees that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, but subject to the terms thereof, any payments with respect to the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Proceeds of the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, on the Purchase Contract Settlement Date equal to the aggregate Purchase Price for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's obligations under the related Purchase Contracts and such Holder shall acquire no right, title or interest in such payments. The Holder of this Corporate Units Certificate hereby accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with the Purchase

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Contract and Pledge Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for or in connection with the Purchase Contract and Pledge Agreement. Upon U.S. Bank's receipt of any initial direction, notice or instruction hereunder, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of this Agreement shall be deemed by the Holder of this Corporate Units Certificate as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the conflicts of law provisions thereof to the extent a different law would govern as a result.

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company, the Purchase Contract Agent and any agent of the Company or the Purchase Contract Agent may treat the Person in whose name this Corporate Units Certificate is registered as the owner of the Corporate Units evidenced hereby for the purpose of receiving payments of Contract Adjustment Payments (subject to any applicable record date), performance of the Purchase Contracts and for all other purposes whatsoever, whether or not any payments in respect thereof be overdue and notwithstanding any notice to the contrary, and neither the Company, the Purchase Contract Agent nor any such agent shall be affected by notice to the contrary.

A copy of the Purchase Contract and Pledge Agreement is available for inspection at the Corporate Trust Office of the Purchase Contract Agent during regular business hours.

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**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MN ACT: \_\_\_\_\_ Custodian \_\_\_\_\_  
(minor) (cust)

Under Uniform Gifts to Minors Act of

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

\_\_\_\_\_  
(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

\_\_\_\_\_  
(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Corporate Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Corporate Units Certificates on the books of NiSource Inc. with full power of substitution in the premises

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

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Corporate Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Medallion Signature  
Guarantee:

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**SETTLEMENT INSTRUCTIONS**

The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated:  
If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

(if assigned to another person)  
REGISTERED HOLDER  
Please print name and address of registered Holder:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Social Security or other Taxpayer Identification Number, if any

\_\_\_\_\_  
Signature

Medallion Signature Guarantee:

**ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT**

The undersigned Holder of this Corporate Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Corporate Units evidenced by this Corporate Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Corporate Units in multiples of 10 Corporate Units or an integral multiple thereof. The undersigned Holder directs the Purchase Contract Agent that a certificate for shares (including in book-entry if requested by the Holder) of Common Stock deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check for any fractional shares and any Corporate Units Certificate representing any Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. Shares of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

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

Medallion Signature Guarantee: \_\_\_\_\_

Number of Corporate Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

If shares of Common Stock or Corporate Units Certificates are to be registered in the name of and delivered to and Pledged Convertible Preferred Shares are to be transferred to a Person other than the Holder, please (i) print such Person's name and address below, and (ii) provide a guarantee of your signature:

**REGISTERED HOLDER**

Please print name and address of registered Holder:

Name	Name
Address	Address

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DTC Participant Code	DTC Participant Code
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Social Security or other Taxpayer Identification Number, if any

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

Medallion Signature

Guarantee: \_\_\_\_\_

Transfer Instructions for Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or the Applicable Ownership Interests in the Treasury Portfolio, as the case may be, transferable upon [Early Settlement] [Fundamental Change Early Settlement]:



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[TO BE ATTACHED TO GLOBAL CERTIFICATES]

**SCHEDULE OF INCREASES OR DECREASES IN  
GLOBAL CERTIFICATE**

The initial number of Corporate Units evidenced by this Global Certificate is \_\_\_\_\_. The following increases or decreases in this Global Certificate have been made:

<b>Date</b>	<b><u>Amount of increase in number of Corporate Units evidenced by the Global Certificate</u></b>	<b><u>Amount of decrease in number of Corporate Units evidenced by the Global Certificate</u></b>	<b><u>Number of Corporate Units evidenced by this Global Certificate following such decrease or increase</u></b>	<b><u>Signature of authorized signatory of Paying Agent</u></b>
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**EXHIBIT B**

**(FORM OF FACE OF TREASURY UNITS CERTIFICATE)**

[For inclusion in Global Certificates only—THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS NOMINEE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”), THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

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No. TR–  
Number of Treasury Units:

CUSIP No. 65473P 139  
ISIN No. US65473P1396

NISOURCE INC.

Series A Treasury Units

This Treasury Units Certificate certifies that [ ] is the registered Holder of the number of Treasury Units set forth above [For inclusion in Global Certificates only—or such other number of Treasury Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto], which number, taken together with the number of all other Outstanding Treasury Units and the number of all Outstanding Corporate Units and Outstanding Cash Settled Units, shall not exceed 8,625,000. Each Treasury Unit consists of (i) an undivided beneficial ownership interest in a Treasury Security, subject to the Pledge of such Treasury Security by such Holder pursuant to the Purchase Contract and Pledge Agreement, and (ii) the rights and obligations of the Holder under one Purchase Contract with the Company.

All capitalized terms used herein without definition herein and that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meaning set forth therein.

In the event of any inconsistency between the provisions of this Treasury Units Certificate and the provisions of the Purchase Contract and Pledge Agreement, the provisions of the Purchase Contract and Pledge Agreement shall govern and control.

Pursuant to the Purchase Contract and Pledge Agreement, the Treasury Security underlying each Treasury Unit evidenced hereby has been pledged to the Collateral Agent, for the benefit of the Company, to secure the obligations of the Holder under the Purchase Contract comprising part of such Treasury Unit.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Treasury Unit evidenced hereby, an amount (the “**Contract Adjustment Payments**”) equal to 7.75% per year of the Stated Amount for the period from and including the immediately preceding Contract Adjustment Payment Date on which Contract Adjustment Payments were paid (or if none, April 19, 2021) to but excluding such Contract Adjustment Payment Date. Such Contract Adjustment Payments shall be payable in cash, shares of Common Stock or a combination thereof, at the Company’s election, to the Person in whose name this Treasury Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company’s existing and future Indebtedness.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a Purchase Price equal to the Stated Amount, a number of newly issued shares of Common Stock of the Company, equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental

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Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby, if not paid earlier, shall be paid on the Purchase Contract Settlement Date by application of the proceeds from the Treasury Security pledged to secure the obligations under such Purchase Contract of the Holder of the Treasury Units of which such Purchase Contract is a part.

Contract Adjustment Payments paid in cash will be payable at the office of the Purchase Contract Agent in New York City, except that Contract Adjustment Payments with respect to Global Certificates will be made by wire transfer of immediately available funds to the Depository. If the book-entry system for the Treasury Units has been terminated, the Contract Adjustment Payments paid in cash will be payable, at the option of the Company, by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or by wire transfer to the account designated by such Person by prior written notice to the Purchase Contract Agent, given at least ten calendar days prior to the Contract Adjustment Payment Date.

Each Purchase Contract evidenced hereby obligates the Holder and the Beneficial Owner to agree, for United States federal income tax purposes, to (i) treat the Beneficial Owner's acquisition of the Treasury Units as an acquisition of the Treasury Security and Purchase Contracts constituting the Treasury Units and (ii) treat the Beneficial Owner as the owner of the applicable Treasury Security.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual or electronic signature, this Treasury Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such  
Holder under the Purchase Contracts)

By: U.S. Bank National Association, not individually but  
solely as attorney-in-fact of such Holder

By: \_\_\_\_\_  
Name:  
Title:

DATED: \_\_\_\_\_

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**CERTIFICATE OF AUTHENTICATION OF  
PURCHASE CONTRACT AGENT**

This is one of the Treasury Unit Certificates referred to in the within mentioned Purchase Contract and Pledge Agreement.

U.S. Bank National Association, as Purchase Contract Agent

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

DATED: \_\_\_\_\_

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**(REVERSE OF TREASURY UNITS CERTIFICATE)**

Each Purchase Contract evidenced hereby is governed by a Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (as may be supplemented from time to time, the “**Purchase Contract and Pledge Agreement**”), between the Company and U.S. Bank National Association, as Purchase Contract Agent (in such capacity, including its successors thereunder, the “**Purchase Contract Agent**”), and as Collateral Agent, Custodial Agent and Securities Intermediary (in such capacities, including its successors thereunder, the “**Collateral Agent**”), to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Collateral Agent, the Company and the Holders and of the terms upon which the Treasury Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Treasury Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of newly issued shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Units of which such Purchase Contract is a part shall have occurred.

No fractional shares of Common Stock will be issued upon settlement of Purchase Contracts, as provided in Section 5.07 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Early Settlement or Fundamental Change Early Settlement shall obligate the Holder of the related Treasury Units to purchase at the Purchase Price and the Company to sell, a number of newly issued shares of Common Stock determined pursuant to the Purchase Contract and Pledge Agreement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, unless a Termination Event shall have occurred, the Holder of this Treasury Units Certificate shall pay the Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby by effecting an Early Settlement or, if applicable, a Fundamental Change Early Settlement of each such Purchase Contract or by applying the proceeds of the Treasury Security underlying such Holder’s Treasury Unit equal to the Purchase Price for such Purchase Contract to the purchase of the Common Stock.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby and all obligations and rights of the Company and the Holder thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall terminate if a Termination Event shall occur. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent and to the Holders, at their addresses as they

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appear in the Security Register. Upon and after the occurrence of a Termination Event, the Collateral Agent shall release the Treasury Security underlying each Treasury Unit from the Pledge. A Treasury Unit shall thereafter represent the right to receive the Treasury Security underlying such Treasury Unit, in accordance with the terms of the Purchase Contract and Pledge Agreement.

The Treasury Units Certificates are issuable only in registered form and only in denominations of a single Treasury Unit and any integral multiple thereof. The transfer of any Treasury Units Certificate will be registered and Treasury Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Mandatory Convertible Preferred Stock for the Treasury Security, thereby recreating Corporate Units, shall be responsible for any taxes, governmental charges or other fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, such Treasury Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Treasury Unit in respect of the Treasury Security and the Purchase Contract constituting such Treasury Unit may be transferred and exchanged only as a Treasury Unit.

Subject to, and in compliance with, the conditions and terms set forth in the Purchase Contract and Pledge Agreement, the Holder of Treasury Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Convertible Preferred Shares secure the Holder's obligations under the Purchase Contract shall be referred to as a "**Corporate Unit**". A Holder may make such Collateral Substitution only in integral multiples of 10 Treasury Units for 10 Corporate Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting an Early Settlement or a Fundamental Change Early Settlement as provided in the Purchase Contract and Pledge Agreement.

Upon registration of transfer of this Treasury Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement), under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Treasury Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Treasury Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform the related Purchase Contracts forming part of the Treasury Units evidenced hereby, the Purchase Contract and Pledge Agreement and the Remarketing Agreement identified therein, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time (the "**Remarketing Agreement**"), on its behalf and in its name as its attorney-in-fact, and the Holder of this Treasury Units Certificate hereby authorizes the Purchase Contract Agent to take such actions on its behalf and to exercise such powers as are delegated to the Purchase Contract Agent by the



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terms of the Purchase Contract and Pledge Agreement, the Remarketing Agreement, or under any other document or instrument referred to or provided for herein or in connection herewith; expressly withholds any consent to the assumption (i.e., affirmation) of the Purchase Contracts by the Company or its trustee in the event that the Company becomes the subject of a case under the Bankruptcy Code, agrees to be bound by the terms and provisions thereof and the Treasury Units evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract and Pledge Agreement) for so long as it remains of a Holder of such Unit, covenants and agrees to perform its obligations under such Purchase Contracts, consents to the provisions of the Purchase Contract and Pledge Agreement, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract and Pledge Agreement on its behalf as its attorney-in-fact, and consents to the Pledge of the Treasury Security underlying this Treasury Units Certificate pursuant to the Purchase Contract and Pledge Agreement. The Holder further covenants and agrees, that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, but subject to the terms thereof, payments in respect of the Treasury Security on the Purchase Contract Settlement Date equal to the aggregate Purchase Price for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's obligations under the related Purchase Contracts and such Holder shall acquire no right, title or interest in such payments. The Holder of this Treasury Units Certificate hereby accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with the Purchase Contract and Pledge Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for or in connection with the Purchase Contract and Pledge Agreement. Upon U.S. Bank's receipt of any initial direction, notice or instruction hereunder, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of this Agreement shall be deemed by the Holder of this Treasury Units Certificate as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the conflicts of law provisions thereof to the extent a different law would govern as a result.

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company, the Purchase Contract Agent and any agent of the Company or the Purchase Contract Agent may treat the Person in whose name this Treasury Units Certificate is registered as the owner of the Treasury Units evidenced hereby for the purpose of receiving payments of Contract Adjustment Payments (subject to any applicable record date), performance of the Purchase Contracts and for all other purposes whatsoever, whether or not any payments in respect thereof be overdue and notwithstanding any notice to the contrary, and neither the Company, the Purchase Contract Agent nor any such agent shall be affected by notice to the contrary.

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A copy of the Purchase Contract and Pledge Agreement is available for inspection at the Corporate Trust Office of the Purchase Contract Agent during regular business hours.

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**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MN ACT: Custodian

(cust) (minor)

Under Uniform Gifts to Minors Act of

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

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(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

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(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Treasury Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Treasury Units Certificates on the books of NiSource Inc., with full power of substitution in the premises

Dated: \_\_\_\_\_ Signature  
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Treasury Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Medallion Signature Guarantee: \_\_\_\_\_

**SETTLEMENT INSTRUCTIONS**

The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated:	(if assigned to another person)
If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:	REGISTERED HOLDER Please print name and address of registered Holder:

Name	Name
Address	Address

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DTC Participant Code	DTC Participant Code
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Social Security or other Taxpayer Identification Number, if any	
Signature	

Medallion Signature Guarantee: \_\_\_\_\_

**ELECTION TO SETTLE EARLY/FUNDAMENTAL CHANGE EARLY SETTLEMENT**

The undersigned Holder of this Treasury Units Certificate hereby irrevocably exercises the option to effect [Early Settlement] [Fundamental Change Early Settlement] in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Treasury Units evidenced by this Treasury Units Certificate specified below. The option to effect [Early Settlement] [Fundamental Change Early Settlement] may be exercised only with respect to Purchase Contracts underlying Treasury Units in multiples of 10 Treasury Units or an integral multiple thereof. The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] be registered in the name of, and delivered, together with a check for any fractional shares and any Treasury Units Certificate representing any Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. The relevant Treasury Security deliverable upon such [Early Settlement] [Fundamental Change Early Settlement] will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

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

Medallion Signature Guarantee: \_\_\_\_\_

Number of Treasury Units evidenced hereby as to which [Early Settlement] [Fundamental Change Early Settlement] of the related Purchase Contracts is being elected:

If shares of Common Stock or Treasury Units Certificates are to be registered in the name of and delivered to and Proceeds of the relevant Treasury Security are to be transferred to a Person other than the Holder, please (i) print such Person's name and address below, and (ii) provide a guarantee of your signature:

REGISTERED HOLDER  
Please print name and address of registered Holder:

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number, if any

REGISTERED HOLDER

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

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Medallion Signature

Guarantee: \_\_\_\_\_

Transfer Instructions for the applicable Treasury Security Transferable upon [Early Settlement] [Fundamental Change Early Settlement]:

B-13

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[TO BE ATTACHED TO GLOBAL CERTIFICATES]

**SCHEDULE OF INCREASES OR DECREASES IN**

**GLOBAL CERTIFICATE**

The initial number of Treasury Units evidenced by this Global Certificate is \_\_\_\_\_. The following increases or decreases in this Global Certificate have been made:

<b>Date</b>	<b><u>Amount of increase in number of Treasury Units evidenced by the Global Certificate</u></b>	<b><u>Amount of decrease in number of Treasury Units evidenced by the Global Certificate</u></b>	<b><u>Number of Treasury Units evidenced by this Global Certificate following such decrease or increase</u></b>	<b><u>Signature of authorized signatory of Paying Agent</u></b>
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**EXHIBIT C**

**(FORM OF FACE OF CASH SETTLED UNITS CERTIFICATE)**

[For inclusion in Global Certificates only—THIS CERTIFICATE IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE PURCHASE CONTRACT AND PLEDGE AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO., AS NOMINEE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE “**DEPOSITARY**”), THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY. THIS CERTIFICATE IS EXCHANGEABLE FOR CERTIFICATES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE PURCHASE CONTRACT AND PLEDGE AGREEMENT AND NO TRANSFER OF THIS CERTIFICATE (OTHER THAN A TRANSFER OF THIS CERTIFICATE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]



No. CA-  
Number of Cash Settled Units:

CUSIP No. 65473P 147  
ISIN No. US65473P1479

NISOURCE INC.

Series A Cash Settled Units

This Cash Settled Units Certificate certifies that [\_\_\_\_\_] is the registered Holder of the number of Cash Settled Units set forth above [For inclusion in Global Certificates only—or such other number of Cash Settled Units reflected in the Schedule of Increases or Decreases in Global Certificate attached hereto], which number, taken together with the number of all other Outstanding Cash Settled Units and the number of all Outstanding Corporate Units and Outstanding Treasury Units, shall not exceed 8,625,000. Each Cash Settled Unit consists of (i) \$100 in Cash, subject to the Pledge thereof by such Holder pursuant to the Purchase Contract and Pledge Agreement, and (ii) the rights and obligations of the Holder under one Purchase Contract with the Company.

All capitalized terms used herein without definition herein and that are defined in the Purchase Contract and Pledge Agreement (as defined on the reverse hereof) have the meaning set forth therein.

Pursuant to the Purchase Contract and Pledge Agreement, the Cash underlying each Cash Settled Unit evidenced hereby has been pledged to the Collateral Agent, for the benefit of the Company, to secure the obligations of the Holder under the Purchase Contract comprising part of such Cash Settled Unit.

The Company shall pay, on each Contract Adjustment Payment Date, in respect of each Purchase Contract forming part of a Cash Settled Unit evidenced hereby, an amount (the “**Contract Adjustment Payments**”) equal to 7.75% per year of the Stated Amount for the period from and including the immediately preceding Contract Adjustment Payment Date on which Contract Adjustment Payments were paid (or if none, April 19, 2021) to but excluding such Contract Adjustment Payment Date. Such Contract Adjustment Payments shall be payable in cash, shares of Common Stock or a combination thereof, at the Company’s election, to the Person in whose name this Cash Settled Units Certificate is registered at the close of business on the Record Date for such Contract Adjustment Payment Date. The Company may, at its option, defer such Contract Adjustment Payments as described in the Purchase Contract and Pledge Agreement. The Contract Adjustment Payments are unsecured and will rank subordinate and junior in right of payment to all of the Company’s existing and future Indebtedness.

Each Purchase Contract evidenced hereby obligates the Holder of this Cash Settled Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a Purchase Price equal to the Stated Amount, a number of newly issued shares of Common Stock of the Company, equal to the Settlement Rate, unless on or prior to the Purchase Contract Settlement Date there shall have occurred a Termination Event, an Early Settlement or a Fundamental Change Early Settlement with respect to such Purchase Contract, all as provided in the Purchase Contract and Pledge Agreement. The Purchase Price for the shares of Common Stock purchased pursuant to each Purchase Contract evidenced hereby shall be paid on the Purchase Contract Settlement Date by application of the Cash pledged to secure the obligations under such Purchase Contract of the Holder of the Cash Settled Units of which such Purchase Contract is a part.

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Contract Adjustment Payments paid in cash will be payable at the office of the Purchase Contract Agent in New York City, except that Contract Adjustment Payments with respect to Global Certificates will be made by wire transfer of immediately available funds to the Depository. If the book-entry system for the Cash Settled Units has been terminated, the Contract Adjustment Payments paid in cash will be payable, at the option of the Company, by check mailed to the address of the Person entitled thereto at such Person's address as it appears on the Security Register, or by wire transfer to the account designated by such Person by prior written notice to the Purchase Contract Agent, given at least ten calendar days prior to the Contract Adjustment Payment Date.

Each Purchase Contract evidenced hereby obligates the Holder and the Beneficial Owner to agree, for United States federal income tax purposes, to (i) treat the Beneficial Owner's acquisition of the Cash Settled Units as an acquisition of the Cash and Purchase Contracts constituting the Cash Settled Units and (ii) treat the Beneficial Owner as the owner of the Cash.

Reference is hereby made to the further provisions set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Purchase Contract Agent by manual or electronic signature, this Cash Settled Units Certificate shall not be entitled to any benefit under the Purchase Contract and Pledge Agreement or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company and the Holder specified above have caused this instrument to be duly executed.

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:

HOLDER SPECIFIED ABOVE (as to obligations of such  
Holder under the Purchase Contracts)

By: U.S. Bank National Association, not individually but  
solely as attorney-in-fact of such Holder

By: \_\_\_\_\_  
Name:  
Title:

DATED: \_\_\_\_\_

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**CERTIFICATE OF AUTHENTICATION OF  
PURCHASE CONTRACT AGENT**

This is one of the Cash Settled Units referred to in the within mentioned Purchase Contract and Pledge Agreement.

U.S. Bank National Association, as Purchase Contract Agent

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

DATED: \_\_\_\_\_

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(REVERSE OF CASH SETTLED UNITS CERTIFICATE)

Each Purchase Contract evidenced hereby is governed by a Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (as may be supplemented from time to time, the “**Purchase Contract and Pledge Agreement**”), between the Company and U.S. Bank National Association, as Purchase Contract Agent (in such capacity, including its successors thereunder, the “**Purchase Contract Agent**”), and as Collateral Agent, Custodial Agent and Securities Intermediary (in such capacities, including its successors thereunder, the “**Collateral Agent**”), to which Purchase Contract and Pledge Agreement and supplemental agreements thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Purchase Contract Agent, the Collateral Agent, the Company and the Holders and of the terms upon which the Cash Settled Units Certificates are, and are to be, executed and delivered.

Each Purchase Contract evidenced hereby obligates the Holder of this Cash Settled Units Certificate to purchase, and the Company to sell, on the Purchase Contract Settlement Date at a price equal to the Stated Amount, a number of newly issued shares of Common Stock equal to the Settlement Rate, unless an Early Settlement, a Fundamental Change Early Settlement or a Termination Event with respect to the Unit of which such Purchase Contract is a part shall have occurred.

No fractional shares of Common Stock will be issued upon settlement of Purchase Contracts, as provided in Section 5.07 of the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby that is settled through Fundamental Change Early Settlement shall obligate the Holder of the related Cash Settled Units to purchase at the Purchase Price and the Company to sell, a number of newly issued shares of Common Stock determined pursuant to the Purchase Contract and Pledge Agreement.

In accordance with the terms of the Purchase Contract and Pledge Agreement, unless a Termination Event shall have occurred, the Holder of this Cash Settled Units Certificate shall pay the Purchase Price for the shares of Common Stock to be purchased pursuant to each Purchase Contract evidenced hereby by effecting, if applicable, a Fundamental Change Early Settlement of each such Purchase Contract or by applying the Cash underlying such Holder’s Cash Settled Unit equal to the Purchase Price for such Purchase Contract to the purchase of the Common Stock.

The Company shall not be obligated to issue any shares of Common Stock in respect of a Purchase Contract or deliver any certificates therefor to the Holder unless it shall have received payment of the aggregate Purchase Price for the shares of Common Stock to be purchased thereunder in the manner set forth in the Purchase Contract and Pledge Agreement.

Each Purchase Contract evidenced hereby and all obligations and rights of the Company and the Holder thereunder, including, without limitation, the rights of the Holders to receive and the obligation of the Company to pay any Contract Adjustment Payments, shall terminate if a Termination Event shall occur. Upon the occurrence of a Termination Event, the Company shall give written notice to the Purchase Contract Agent and the Holders, at their addresses as they appear in the Security Register. Upon and after the occurrence of a Termination Event, the Collateral Agent shall release the Cash underlying each Cash Settled Unit from the Pledge. A Cash Settled Unit shall thereafter represent the right to receive the Cash underlying such Cash Settled Unit, in accordance with the terms of the Purchase Contract and Pledge Agreement.

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The Cash Settled Units Certificates are issuable only in registered form and only in denominations of a single Cash Settled Unit and any integral multiple thereof. The transfer of any Cash Settled Units Certificate will be registered and Cash Settled Units Certificates may be exchanged as provided in the Purchase Contract and Pledge Agreement. A Holder who elects to substitute Mandatory Convertible Preferred Stock for the Cash, thereby recreating Corporate Units, shall be responsible for any taxes, governmental charges or other fees or expenses payable in connection therewith. Except as provided in the Purchase Contract and Pledge Agreement, a Cash Settled Unit shall not be separable into its constituent parts, and the rights and obligations of the Holder of such Cash Settled Unit in respect of the Cash and the Purchase Contract constituting such Cash Settled Unit may be transferred and exchanged only as a Cash Settled Unit.

Subject to, and in compliance with, the conditions and terms set forth in the Purchase Contract and Pledge Agreement, the Holder of Cash Settled Units may effect a Collateral Substitution. From and after such Collateral Substitution, each Unit for which Pledged Convertible Preferred Shares secure the Holder's obligations under the Purchase Contract shall be referred to as a "**Corporate Unit**". A Holder may make such Collateral Substitution only in integral multiples of 10 Cash Settled Units for 10 Corporate Units.

Subject to and upon compliance with the provisions of, and certain exceptions described in, the Purchase Contract and Pledge Agreement, at the option of the Holder thereof, Purchase Contracts underlying Units may be settled early by effecting a Fundamental Change Early Settlement as provided in the Purchase Contract and Pledge Agreement.

Upon registration of transfer of this Cash Settled Units Certificate, the transferee shall be bound (without the necessity of any other action on the part of such transferee, except as may be required by the Purchase Contract Agent pursuant to the Purchase Contract and Pledge Agreement), under the terms of the Purchase Contract and Pledge Agreement and the Purchase Contracts evidenced hereby and the transferor shall be released from the obligations under the Purchase Contracts evidenced by this Cash Settled Units Certificate. The Company covenants and agrees, and the Holder, by its acceptance hereof, likewise covenants and agrees, to be bound by the provisions of this paragraph.

The Holder of this Cash Settled Units Certificate, by its acceptance hereof, irrevocably appoints the Purchase Contract Agent to enter into and perform the related Purchase Contracts forming part of the Cash Settled Units evidenced hereby, the Purchase Contract and Pledge Agreement and the Remarketing Agreement identified therein, as the same may be amended, amended and restated, supplemented or otherwise modified or replaced from time to time (the "**Remarketing Agreement**"), on its behalf and in its name as its attorney-in-fact, and the Holder of this Cash Settled Units Certificate hereby authorizes the Purchase Contract Agent to take such actions on its behalf and to exercise such powers as are delegated to the Purchase Contract Agent by the terms of the Purchase Contract and Pledge Agreement, the Remarketing Agreement, or under

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any other document or instrument referred to or provided for herein or in connection herewith; expressly withholds any consent to the assumption (i.e., affirmation) of the Purchase Contracts by the Company or its trustee in the event that the Company becomes the subject of a case under the Bankruptcy Code, agrees to be bound by the terms and provisions thereof and the Cash Settled Units evidenced hereby (including, but not limited to, the terms and provisions of the Purchase Contract Agreement) for so long as it remains a Holder of such Unit, covenants and agrees to perform its obligations under such Purchase Contracts, consents to the provisions of the Purchase Contract and Pledge Agreement, authorizes the Purchase Contract Agent to enter into and perform the Purchase Contract and Pledge Agreement on its behalf as its attorney-in-fact, and consents to the Pledge of the Cash underlying this Cash Settled Units Certificate pursuant to the Purchase Contract and Pledge Agreement. The Holder further covenants and agrees, that, to the extent and in the manner provided in the Purchase Contract and Pledge Agreement, but subject to the terms thereof, on the Purchase Contract Settlement Date an amount of Pledged Cash equal to the aggregate Purchase Price for the related Purchase Contracts shall be paid by the Collateral Agent to the Company in satisfaction of such Holder's obligations under such Purchase Contracts. The Holder of this Cash Settled Units Certificate hereby accepts the authorizations, appointments, acknowledgments and other actions taken by the Purchase Contract Agent in accordance with the Purchase Contract and Pledge Agreement, the Remarketing Agreement or any other document or instrument referred to or provided for or in connection with the Purchase Contract and Pledge Agreement. Upon U.S. Bank's receipt of any initial direction, notice or instruction hereunder, any further instruction, notice or direction that U.S. Bank is required to make to U.S. Bank in its other capacities under the terms of this Agreement shall be deemed by the Holder of this Cash Settled Units Certificate as being made by U.S. Bank in such other capacities without any further action by U.S. Bank in such other capacities.

Subject to certain exceptions, the provisions of the Purchase Contract and Pledge Agreement may be amended with the consent of the Holders of a majority of the Purchase Contracts.

The Purchase Contracts shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the conflicts of law provisions thereof to the extent a different law would govern as a result.

The Purchase Contracts shall not, prior to the settlement thereof, entitle the Holder to any of the rights of a holder of shares of Common Stock.

Prior to due presentment of this Certificate for registration of transfer, the Company, the Purchase Contract Agent and any agent of the Company or the Purchase Contract Agent may treat the Person in whose name this Cash Settled Units Certificate is registered as the owner of the Cash Settled Units evidenced hereby for the purpose of receiving payments of Contract Adjustment Payments (subject to any applicable record date), performance of the Purchase Contracts and for all other purposes whatsoever, whether or not any payments in respect thereof be overdue and notwithstanding any notice to the contrary, and neither the Company, the Purchase Contract Agent nor any such agent shall be affected by notice to the contrary.

A copy of the Purchase Contract and Pledge Agreement is available for inspection at the Corporate Trust Office of the Purchase Contract Agent during regular business hours.

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**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM: as tenants in common

UNIF GIFT MN ACT: Custodian

(cust) (minor)

Under Uniform Gifts to Minors Act of

TENANT: as tenants by the entireties

JT TEN: as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

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(Please insert Social Security or Taxpayer I.D. or other Identifying Number of Assignee)

---

(Please Print or Type Name and Address Including Postal Zip Code of Assignee)

the within Cash Settled Units Certificates and all rights thereunder, hereby irrevocably constituting and appointing attorney, to transfer said Cash Settled Units Certificates on the books of NiSource Inc., with full power of substitution in the premises

Dated:

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Signature

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Cash Settled Units Certificates in every particular, without alteration or enlargement or any change whatsoever.

Medallion Signature Guarantee: \_\_\_\_\_



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**SETTLEMENT INSTRUCTIONS**

The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon settlement on or after the Purchase Contract Settlement Date of the Purchase Contracts underlying the number of Cash Settled Units evidenced by this Cash Settled Units Certificate be registered in the name of, and delivered, together with a check in payment for any fractional share, to the undersigned at the address indicated below unless a different name and address have been indicated below. If shares are to be registered in the name of, or beneficial interests therein are to be transferred to, a Person other than the undersigned (or the Beneficial Owner of this Certificate), the undersigned (or the Beneficial Owner of this Certificate) will pay any transfer tax payable incident thereto.

Dated:  
If shares are to be registered in the name of and delivered to a Person other than the Holder, please (i) print such Person's name and address and (ii) provide a guarantee of your signature:

Name \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_  
DTC Participant Code

Social Security or other Taxpayer Identification Number, if any  
Signature

Medallion Signature Guarantee: \_\_\_\_\_

(if assigned to another person)  
REGISTERED HOLDER  
Please print name and address of registered Holder:

Name \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_  
DTC Participant Code

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**ELECTION TO FUNDAMENTAL CHANGE EARLY SETTLEMENT**

The undersigned Holder of this Cash Settled Units Certificate hereby irrevocably exercises the option to effect Fundamental Change Early Settlement in accordance with the terms of the Purchase Contract and Pledge Agreement with respect to the Purchase Contracts underlying the number of Cash Settled Units evidenced by this Cash Settled Units Certificate specified below. The option to effect Fundamental Change Early Settlement may be exercised only with respect to Purchase Contracts underlying Cash Settled Units in multiples of 10 Cash Settled Units or an integral multiple thereof. The undersigned Holder directs the Purchase Contract Agent that a certificate (including in book-entry if requested by the Holder) for shares of Common Stock deliverable upon such Fundamental Change Early Settlement be registered in the name of, and delivered, together with a check for any fractional shares and any Cash Settled Units Certificate representing any Cash Settled Units evidenced hereby as to which Fundamental Change Early Settlement of the related Purchase Contracts is not effected, to the undersigned at the address indicated below unless a different name and address have been indicated below. Pledged Cash deliverable upon such Fundamental Change Early Settlement will be transferred in accordance with the transfer instructions set forth below. If shares are to be registered in the name of a Person other than the undersigned, the undersigned will pay any transfer tax payable incident thereto.

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

Medallion Signature Guarantee: \_\_\_\_\_

Number of Cash Settled Units evidenced hereby as to which Fundamental Change Early Settlement of the related Purchase Contracts is being elected:

If shares of Common Stock or Cash Settled Units Certificates are to be registered in the name of and delivered to and Pledged Cash is to be transferred to a Person other than the Holder, please (i) print such Person's name and address below, and (ii) provide a guarantee of your signature:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REGISTERED HOLDER**

Please print name and address of registered Holder:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DTC Participant Code \_\_\_\_\_  
\_\_\_\_\_

DTC Participant Code \_\_\_\_\_  
\_\_\_\_\_

Social Security or other Taxpayer Identification Number, if any  
REGISTERED HOLDER

Signature: \_\_\_\_\_  
Medallion Signature \_\_\_\_\_  
Guarantee: \_\_\_\_\_

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Transfer Instructions for Pledged Cash Transferable upon Fundamental Change Early Settlement:

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**[TO BE ATTACHED TO GLOBAL CERTIFICATES]**

**SCHEDULE OF INCREASES OR DECREASES IN  
 GLOBAL CERTIFICATE**

The initial number of Cash Settled Units evidenced by this Global Certificate is \_\_\_\_\_. The following increases or decreases in this Global Certificate have been made:

Date	Amount of increase in number of Cash Settled Units evidenced by the Global Certificate	Amount of decrease in number of Cash Settled Units evidenced by the Global Certificate	Number of Cash Settled Units evidenced by this Global Certificate following such decrease or increase	Signature of authorized signatory of Paying Agent
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**EXHIBIT D**

**INSTRUCTION TO PURCHASE CONTRACT AGENT FROM HOLDER**

(To Create Treasury Units or Corporate Units)

U.S. Bank National Association,  
as Purchase Contract Agent  
CityPlace I, 185 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: [Corporate Units CUSIP No. 65473P 121] [ Treasury Units CUSIP No. 65473P 139] [Cash Settled Units CUSIP No. 65473P 147] of NiSource Inc., a Delaware corporation (the “**Company**”).

The undersigned Holder hereby notifies you that it has deposited with U.S. Bank National Association, as Collateral Agent, for credit to the Collateral Account, \$[\_\_\_\_\_] [Value of Mandatory Convertible Preferred Stock] [Treasury Securities] in exchange for [an equal Value of Pledged Treasury Securities] [an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock] held in the Collateral Account, in accordance with the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”; unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein), between the Company and you, as the Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary. The undersigned Holder has paid all applicable fees and expenses relating to such exchange. The undersigned Holder hereby instructs you to instruct the Collateral Agent to release to you on behalf of the undersigned Holder the [Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock] [Treasury Securities] [Cash] related to such [Corporate Units] [Treasury Units] [Cash Settled Units].

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

Medallion Signature Guarantee: \_\_\_\_\_

Please print name and address of registered Holder:

Name \_\_\_\_\_ Social Security or other Taxpayer Identification Number, if any \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
DTC Participant Code

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Copy to: Computershare Trust Company, N.A.  
Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

**EXHIBIT E**

**INSTRUCTION TO PURCHASE CONTRACT AGENT FROM HOLDER**

(To Create Cash Settled Units)

U.S. Bank National Association,  
as Purchase Contract Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Cash Settled Units of NiSource Inc., a Delaware corporation (the “**Company**”).

The undersigned Holder hereby notifies you that it has delivered to U.S. Bank National Association, as Collateral Agent, for credit to the Collateral Account, \$[ ] in exchange for an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock held in the Collateral Account, in accordance with the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”; unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein), between the Company and you, as the Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary. The undersigned Holder has paid all applicable fees and expenses relating to such exchange. The undersigned Holder hereby instructs you to instruct the Collateral Agent to release to you on behalf of the undersigned Holder the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock related to such Corporate Units.

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

Medallion Signature Guarantee: \_\_\_\_\_

Please print name and address of registered Holder:

Name \_\_\_\_\_ Social Security or other Taxpayer Identification  
Number, if any

Address \_\_\_\_\_

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
DTC Participant Code

Copy to: Computershare Trust Company, N.A.

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Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374



EXHIBIT F

**NOTICE FROM PURCHASE CONTRACT AGENT  
TO HOLDERS UPON TERMINATION EVENT**

(Transfer of Collateral upon Occurrence of a Termination Event)

[HOLDER]  
Attention:  
Telecopy:

Re: [Corporate Units] [ Treasury Units] [ Cash Settled Units] of NiSource Inc., a Delaware corporation (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Purchase Contract and Pledge Agreement**”; unless otherwise defined herein, terms defined in the Purchase Contract and Pledge Agreement are used herein as defined therein), between the Company and the undersigned, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time and as the Collateral Agent, the Custodial Agent and the Securities Intermediary.

We hereby notify you that a Termination Event has occurred and that [the Mandatory Convertible Preferred Stock underlying the Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock] [the Applicable Ownership Interests in the Treasury Portfolio] [the Proceeds of the Treasury Security] [Pledged Cash] comprising a portion of your ownership interest in [ ] [Corporate Units] [Treasury Units] [Cash Settled Units] have been released and are being held by us for your account pending receipt of transfer instructions with respect to such [Mandatory Convertible Preferred Stock] [Applicable Ownership Interests in the Treasury Portfolio] [Proceeds of the Treasury Security] [Pledged Cash] (the “**Released Securities**”).

Pursuant to Section 3.16(a) of the Purchase Contract and Pledge Agreement, we hereby request written transfer instructions with respect to the Released Securities. Upon receipt of your instructions and upon transfer to us of your [Corporate Units] [Treasury Units] [Cash Settled Units] effected through book-entry or by delivery to us of your [Corporate Units Certificate] [Treasury Units Certificate] [Cash Settled Units Certificate], we shall transfer the Released Securities by [book-entry transfer] [wire transfer] or other appropriate procedures, in accordance with your instructions. In the event you fail to effect such transfer or delivery, the Released Securities and any distributions thereon, shall be held in our name, or a nominee in trust for your benefit, until such time as such [Corporate Units] [Treasury Units] [Cash Settled Units] are transferred or your [Corporate Units Certificate] [Treasury Units Certificate] [Cash Settled Units Certificate] is surrendered or evidence is provided that such [Corporate Units Certificate]

---

[Treasury Units Certificate] [Cash Settled Units Certificate] has been destroyed, lost or stolen, together with any indemnification that we or the Company may require.

Date:

U.S. Bank National Association, as Purchase Contract Agent

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

Name:

Title:

Copy to: Computershare Trust Company, N.A.  
Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

**EXHIBIT G**

**INSTRUCTION**  
**FROM PURCHASE CONTRACT AGENT**  
**TO COLLATERAL AGENT**  
(Creation of Treasury Units)

U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with Section 3.12(a) of the Agreement that the holder of securities named below (the “**Holder**”) has elected to substitute [\_\_\_\_] Treasury Securities and/or security entitlements with respect thereto in exchange for an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock relating to Corporate Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Treasury Securities and/or security entitlements with respect thereto to the Securities Intermediary, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Treasury Securities and/or security entitlements with respect thereto have been credited to the Collateral Account, to release to the undersigned an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements with respect thereto related to [\_\_\_\_] Corporate Units of such Holder in accordance with Section 3.12(a) of the Agreement.

---

Date:

U.S. Bank National Association, as Purchase Contract Agent  
and as attorney-in-fact of the Holders from time to time of the  
Units

By: \_\_\_\_\_  
Name:  
Title:

Please print name and address of Holder electing to substitute Treasury Securities and/or security entitlements with respect thereto for the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock:

Please print name and address of registered Holder:

Name:

Social Security or other Taxpayer Identification  
Number, if any

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DTC Participant Code

Copy to: Computershare Trust Company, N.A.  
Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

**EXHIBIT H**

**INSTRUCTION  
FROM COLLATERAL AGENT  
TO SECURITIES INTERMEDIARY**

(Creation of Treasury Units)

U.S. Bank National Association,  
as Securities Intermediary  
CityPlace I, 185 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

This notice relates to the securities account of U.S. Bank National Association, as Collateral Agent, maintained by the Securities Intermediary and designated “NiSource, Inc. Collateral Account” (the “**Collateral Account**”).

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

When you have confirmed that [\_\_\_\_] Treasury Securities and/or security entitlements with respect thereto have been credited to the Collateral Account by or for the benefit of [\_\_\_\_], as Holder of Corporate Units (the “**Holder**”), you are hereby instructed to release from the Collateral Account an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements with respect thereto relating to [\_\_\_\_] Corporate Units of the Holder by Transfer to the Purchase Contract Agent.

Date:

U.S. Bank National Association, as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT I**

**INSTRUCTION**  
**FROM PURCHASE CONTRACT AGENT**  
**TO COLLATERAL AGENT**  
(Creation of Cash Settled Units)

U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with Section 3.13(a) of the Agreement that the holder of securities named below (the “**Holder**”) has elected to substitute \$[ ] of Cash in exchange for an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock relating to Corporate Units and has delivered to the undersigned a notice stating that the Holder has Transferred such Cash to the Securities Intermediary, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Cash has been credited to the Collateral Account, to release to the undersigned an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements with respect thereto related to [ ] Corporate Units of such Holder in accordance with Section 3.13(a) of the Agreement.

Date:

U.S. Bank National Association, as Purchase Contract Agent  
and as attorney-in-fact of the Holders from time to time of the  
Units

By: \_\_\_\_\_  
Name:  
Title:

---

Please print name and address of Holder electing to substitute Cash for the Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock:

Please print name and address of registered Holder:

Name:

Social Security or other Taxpayer Identification  
Number, if any

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

DTC Participant Code

\_\_\_\_\_

DTC Participant Code

\_\_\_\_\_

Copy to: Computershare Trust Company, N.A.  
Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

EXHIBIT J

**INSTRUCTION**  
**FROM COLLATERAL AGENT**  
**TO SECURITIES INTERMEDIARY**  
  
(Creation of Cash Settled Units)

U.S. Bank National Association,  
as Securities Intermediary  
CityPlace I, 185 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

This notice relates to the securities account of U.S. Bank as Collateral Agent, as Collateral Agent, maintained by the Securities Intermediary and designated “NiSource, Inc. Collateral Account” (the “**Collateral Account**”).

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

When you have confirmed that \$[ ] of Cash has been credited to the Collateral Account by or for the benefit of [ ], as Holder of Corporate Units (the “**Holder**”), you are hereby instructed to release from the Collateral Account an equal Value of Mandatory Convertible Preferred Stock underlying Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock or security entitlements with respect thereto relating to [ ] Corporate Units of the Holder by Transfer to the Purchase Contract Agent.

Date:

U.S. Bank National Association, as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT K**

**INSTRUCTION**  
**FROM PURCHASE CONTRACT AGENT**  
**TO COLLATERAL AGENT**  
(Recreation of Corporate Units)

U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: [Treasury][Cash Settled] Units of NiSource Inc. (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of [Treasury][Cash Settled] Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with [Section 3.14(a)] [Section 3.15(a)] of the Agreement that the holder of securities named below (the “**Holder**”) has elected to substitute \$[ ] Value of Mandatory Convertible Preferred Stock or security entitlements with respect thereto in exchange for the [Treasury Securities] [Cash] relating to [ ] [Treasury][Cash Settled] Units and has delivered to the undersigned a notice stating that the holder has Transferred such Mandatory Convertible Preferred Stock or security entitlements with respect thereto to the Securities Intermediary, for credit to the Collateral Account.

We hereby request that you instruct the Securities Intermediary, upon confirmation that such Mandatory Convertible Preferred Stock or security entitlements with respect thereto have been credited to the Collateral Account, to release to the undersigned the [proceeds of the Treasury Security related to [ ] Treasury Units][Cash related to [ ] Cash Settled Units] of such Holder in accordance with [Section 3.14(a)] [Section 3.15(a)] of the Agreement.

Date:

U.S. Bank National Association, as Purchase Contract Agent

By: \_\_\_\_\_  
Name:  
Title:

---

Please print name and address of registered Holder:

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number, if any

\_\_\_\_\_  
DTC Participant Code

\_\_\_\_\_  
DTC Participant Code

Copy to: Computershare Trust Company, N.A.  
Transfer Agent and Registrar  
462 South 4<sup>th</sup> Street, Suite 1600  
Louisville, KY 40202  
1-877-373-6374

EXHIBIT L

**INSTRUCTION**  
**FROM COLLATERAL AGENT**  
**TO SECURITIES INTERMEDIARY**  
  
(Recreation of Corporate Units)

U.S. Bank National Association,  
as Securities Intermediary  
CityPlace I, 185 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: [Treasury][Cash Settled] Units of NiSource Inc. (the “**Company**”)

This notice relates to the securities account of U.S. Bank National Association, as Collateral Agent, maintained by the Securities Intermediary and designated “NiSource, Inc. Collateral Account” (the “**Collateral Account**”).

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Securities Intermediary, Custodial Agent, Collateral Agent, Purchase Contract Agent and attorney-in-fact for the holders of [Treasury] [Cash Settled] Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

When you have confirmed that \$[ ] Value of Mandatory Convertible Preferred Stock or security entitlements with respect thereto has been credited to the Collateral Account by or for the benefit of [ ], as Holder of [Treasury] [Cash Settled] Units (the “**Holder**”), you are hereby instructed to release from the Collateral Account the [Treasury Securities corresponding to [ ] Treasury Units] [Cash corresponding to [ ] Cash Settled Units] by Transfer to the Purchase Contract Agent.

Date:

U.S. Bank National Association, as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT M

**INSTRUCTION FROM HOLDER OF SEPARATE SHARES OF  
MANDATORY CONVERTIBLE PREFERRED STOCK TO CUSTODIAL AGENT  
REGARDING REMARKETING**

U.S. Bank National Association,  
as Custodial Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Mandatory Convertible Preferred Stock of NiSource Inc. (the “**Company**”)

The undersigned Holder hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, Custodial Agent, Securities Intermediary, Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units, Treasury Units and Cash Settled Units from time to time, that the undersigned elects to deliver [ ] aggregate number of Separate Shares of Mandatory Convertible Preferred Stock for delivery to a Remarketing Agent prior to a Remarketing, other than during a Blackout Period, for Remarketing pursuant to Section 5.02(d) of the Agreement. The undersigned will, upon request of a Remarketing Agent, execute and deliver any additional documents deemed by such Remarketing Agent or by the Company to be necessary or desirable to complete the sale, assignment and transfer of the Separate Shares of Mandatory Convertible Preferred Stock tendered hereby. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

The undersigned hereby instructs you, upon receipt of the Proceeds of a Successful Remarketing from the Remarketing Agent, to deliver such Proceeds to the undersigned in accordance with the instructions indicated herein under “**A. Payment Instructions**” or the Depository in accordance with the Applicable Procedures of the Depository if such Remarketing was effected through DTC. The undersigned hereby instructs you, in the event of an Unsuccessful Remarketing, upon receipt of the Separate Shares of Mandatory Convertible Preferred Stock tendered herewith from the Remarketing Agents, to deliver such Separate Shares of Mandatory Convertible Preferred Stock to the person(s) and the address(es) indicated herein under “**B. Delivery Instructions.**”

With this notice, the undersigned hereby (i) represents and warrants that the undersigned has full power and authority to tender, sell, assign and transfer the Separate Shares of Mandatory Convertible Preferred Stock tendered hereby and that the undersigned is the record owner of any Separate Shares of Mandatory Convertible Preferred Stock tendered herewith in physical form or a participant in The Depository Trust Company (“**DTC**”) and the beneficial owner of any Separate Shares of Mandatory Convertible Preferred Stock tendered herewith by book-entry transfer to your account at DTC, (ii) agrees to be bound by the terms and conditions of Section 5.02 of the Agreement and (iii) acknowledges and agrees that after 4:00 p.m. (New York City time) on the second Business Day immediately preceding the first day of the Applicable

Remarketing Period, such election shall become an irrevocable election to have such Separate Shares of Mandatory Convertible Preferred Stock remarketed in each Remarketing during the Applicable Remarketing Period, and that the Separate Shares of Mandatory Convertible Preferred Stock tendered herewith will only be returned in the event of an Unsuccessful Remarketing, subject to Section 5.02(b)(viii) of the Agreement.

Date:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Medallion \_\_\_\_\_  
Signature \_\_\_\_\_  
Guarantee: \_\_\_\_\_

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

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number, if any

DTC Participant Code

A. PAYMENT INSTRUCTIONS

Proceeds of a Successful Remarketing should be paid by the following wire instructions, or if unavailable by check in the name of the person(s) set forth below and mailed to the address set forth below.

[Wire Instructions]

Name(s)

\_\_\_\_\_  
(Please Print)  
Address

\_\_\_\_\_  
(Please Print)

---

(Zip Code)

---

(Tax Identification or Social Security Number)

---

(DTC Participant Code)

**B. DELIVERY INSTRUCTIONS**

In the event of an Unsuccessful Remarketing, subject to Section 5.02(b)(viii) of the Agreement, shares of Mandatory Convertible Preferred Stock which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s)

---

(Please Print)

Address

---

(Please Print)

---

(Zip Code)

---

(Tax Identification or Social Security Number)

---

(DTC Participant Code)

In the event of an Unsuccessful Remarketing, subject to Section 5.02(b)(viii) of the Agreement, shares of Mandatory Convertible Preferred Stock which are in book-entry form should be credited to the account at The Depository Trust Company to the person(s) set forth below.

DTC Account Number

Name of Account Party:

EXHIBIT N

**INSTRUCTION FROM HOLDER OF SEPARATE SHARES OF  
MANDATORY CONVERTIBLE PREFERRED STOCK TO CUSTODIAL AGENT  
REGARDING WITHDRAWAL FROM REMARKETING**

U.S. Bank National Association,  
as Custodial Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Mandatory Convertible Preferred Stock of NiSource Inc. (the “**Company**”)

The undersigned Holder hereby notifies you in accordance with Section 5.02(d) of the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, Custodial Agent, Securities Intermediary, Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units, Treasury Units and Cash Settled Units from time to time, that the undersigned elects to withdraw the [ ] Separate Shares of Mandatory Convertible Preferred Stock delivered to you for Remarketing pursuant to Section 5.02 of the Agreement. The undersigned hereby instructs you to return such Separate Shares of Mandatory Convertible Preferred Stock to the person(s) and the address(es) indicated herein below under “**A. Delivery Instructions.**” With this notice, the Undersigned hereby agrees to be bound by the terms and conditions of Section 5.02 of the Agreement. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

Date:

By: \_\_\_\_\_  
Name:  
Title:

Medallion \_\_\_\_\_  
Signature \_\_\_\_\_  
Guarantee: \_\_\_\_\_

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

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number, if any

---

**A. Delivery Instructions**

In the event of a withdrawal of Separate Shares of Mandatory Convertible Preferred Stock from a Remarketing, Separate Shares of Mandatory Convertible Preferred Stock which are in physical form should be delivered to the person(s) set forth below and mailed to the address set forth below.

Name(s): \_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_  
(Please Print)

\_\_\_\_\_  
(Zip Code)

\_\_\_\_\_  
(Zip Code)

In the event of a withdrawal of Separate Shares of Mandatory Convertible Preferred Stock from a Remarketing, Separate Shares of Mandatory Convertible Preferred Stock which are in book-entry form should be credited to the account at The Depository Trust Company to the person(s) set forth below.

DTC Account Number: \_\_\_\_\_

Name of Account Party: \_\_\_\_\_



**EXHIBIT O**

**NOTIFICATION FROM PURCHASE CONTRACT AGENT TO  
COLLATERAL AGENT REGARDING [FUNDAMENTAL CHANGE  
EARLY SETTLEMENT][EARLY SETTLEMENT]**

U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27th Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Mandatory Convertible Preferred Stock of NiSource Inc. (the “**Company**”)

The undersigned hereby notifies you in accordance with Section [5.04(a)][5.06(a)] of the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, Custodial Agent, Securities Intermediary, Purchase Contract Agent and attorney-in-fact for the holders of Corporate Units, Treasury Units and Cash Settled Units from time to time, that all the conditions necessary for [a Fundamental Change Early Settlement][an Early Settlement] (as defined in the Agreement) by the below specified Holder have been satisfied pursuant to which the undersigned has received from such Holder, and paid to the Company as confirmed in writing by the Company, the below specified Purchase Price.

Holder: \_\_\_\_\_  
Purchase Price: \_\_\_\_\_

U.S. Bank National Association, as Purchase Contract Agent

By: \_\_\_\_\_  
Name:  
Title:

DATED: \_\_\_\_\_

EXHIBIT P

**NOTICE TO SETTLE WITH CASH AFTER UNSUCCESSFUL FINAL  
REMARKETING**

U.S. Bank National Association,  
as Purchase Contract Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc., a Delaware corporation (the “**Company**”).

The undersigned Holder hereby irrevocably notifies you in accordance with Section 5.02(b)(viii) of the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Purchase Contract and Pledge Agreement**”), between the Company and you, as the Purchase Contract Agent, the Collateral Agent, the Custodial Agent and the Securities Intermediary, that such Holder has elected to pay to or upon the order of the Securities Intermediary for deposit in the Collateral Account, on or prior to 4:00 p.m. (New York City time) on the Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier’s check or wire transfer, in immediately available funds), \$[\_\_\_\_\_] as the Purchase Price for the shares of Common Stock issuable to such Holder by the Company with respect to [\_\_\_\_\_] Purchase Contracts on the Purchase Contract Settlement Date. The undersigned Holder hereby instructs you to notify promptly the Collateral Agent of the undersigned Holders’ election to settle the Purchase Contracts related to such Holder’s Corporate Units with separate cash.

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

Medallion Signature Guarantee: \_\_\_\_\_

Please print name and address of registered Holder:

\_\_\_\_\_  
Name  
Address

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number, if any

Name of DTC Participant:  
DTC Participant code:

Phone:

Email:

EXHIBIT Q

NOTICE FROM PURCHASE CONTRACT AGENT

TO COLLATERAL AGENT

(Settlement with Separate Cash)

U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between the Company and you, as Collateral Agent, as Securities Intermediary, as Custodial Agent, as Purchase Contract Agent and as attorney-in-fact for the holders of Corporate Units and Treasury Units from time to time. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

We hereby notify you in accordance with Section 5.02(b)(viii) of the Agreement that the holder of Corporate Units named below (the “**Holder**”) has elected to settle the [ ] Purchase Contracts related to its Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock with [ ] of separate cash prior to 4:00 p.m. (New York City time) on the second Business Day immediately preceding the Purchase Contract Settlement Date (in Cash by certified or cashier’s check or wire transfer, in immediately available funds payable to or upon the order of the Securities Intermediary) and has delivered to the undersigned a notice to that effect.

We hereby request that you, upon confirmation that the Purchase Price has been paid by the Holder to the Securities Intermediary in accordance with Section 5.02(b)(viii) of the Agreement in lieu of delivery of the Mandatory Convertible Preferred Stock underlying such Holder’s Applicable Ownership Interests in Mandatory Convertible Preferred Stock, give us notice of the receipt of such payment and, thereafter, you are instructed to, or instructed to cause the Securities Intermediary to, (A) deposit the separate cash received in the Collateral Account and, if applicable, invest such separate cash in Permitted Investments consistent with the instructions of the Company as provided in Section 5.02(b)(viii) of the Agreement, (B) promptly release from the Pledge the Mandatory Convertible Preferred Stock underlying the Applicable Ownership Interests in Mandatory Convertible Preferred Stock related to the Corporate Units as to which such Holder has paid such separate cash; and (C) promptly Transfer all such shares of Mandatory Convertible Preferred Stock to us for distribution to such Holder in accordance with the terms provided for in the Agreement, in each case free and clear of the Pledge created by the Agreement.

---

Please print name and address of registered Holder:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security or other Taxpayer Identification  
Number, if any

\_\_\_\_\_  
Address

\_\_\_\_\_  
DTC Participant Code

U.S. Bank National Association, as Purchase Contract Agent

By: \_\_\_\_\_  
Name:  
Title:

DATED: \_\_\_\_\_

EXHIBIT R

**NOTICE OF SETTLEMENT WITH SEPARATE CASH FROM  
SECURITIES INTERMEDIARY TO PURCHASE CONTRACT AGENT  
AND COLLATERAL AGENT**

(Settlement with Separate Cash)

U.S. Bank National Association,  
as Purchase Contract Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust  
U.S. Bank National Association,  
as Collateral Agent  
CityPlace I, 185 Asylum Street, 27<sup>th</sup> Floor  
Hartford, CT 06103  
Attention: Global Corporate Trust

Re: Corporate Units of NiSource Inc. (the “**Company**”)

Please refer to the Purchase Contract and Pledge Agreement, dated as of April 19, 2021 (the “**Agreement**”), between you and the Company. Unless otherwise defined herein, terms defined in the Agreement are used herein as defined therein.

In accordance with Section 5.02(b)(viii) of the Agreement, we hereby notify you that as of 4:00 p.m. (New York City time) on the Business Day immediately preceding the Purchase Contract Settlement Date, (i) we have received from [ ] \$[ ] in immediately available funds paid in an aggregate amount equal to the Purchase Price due to the Company on the Purchase Contract Settlement Date with respect to [ ] Corporate Units and (ii) based on the funds received set forth in clause (i) above, an aggregate of [ ] shares of Mandatory Convertible Preferred Stock underlying related Pledged Applicable Ownership Interests in Mandatory Convertible Preferred Stock are to be released from the Pledge and Transferred to the Purchase Contract Agent.

Date:

U.S. Bank National Association, as Securities Intermediary

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

Title:

**Exhibit 5.1**

OPINION OF FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

[FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP LETTERHEAD]

April 19, 2021

NiSource Inc.  
801 East 86th Avenue,  
Merrillville, Indiana 46410

Ladies and Gentlemen:

We have acted as counsel to NiSource Inc., a Delaware corporation (“NiSource” or the “Company”), in connection with the Company’s Registration Statement on Form S-3 (Registration No. 333-234422), as may be amended from time to time (the “Registration Statement”) filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to the issue and sale of 8,625,000 of the Company’s Series A Corporate Units (the “Corporate Units”) as described in the Company’s Prospectus Supplement, dated April 13, 2021 (the “Prospectus Supplement”) which, together with the Company’s Base Prospectus dated November 1, 2019, together with the documents incorporated by reference therein, is the “Prospectus”).

Each Corporate Unit has a stated amount of \$100 and initially consists of (i) a Purchase Contract (a “Purchase Contract”) issued by the Company pursuant to which the holder thereof will agree to purchase from the Company and the Company will agree to sell to the holder thereof on December 1, 2023, subject to earlier settlement or termination,, a variable number of shares of the Company’s common stock, \$0.01 par value (the “Common Stock”), equal to the Settlement Rate (as defined in the Prospectus), subject to anti-dilution adjustments , in accordance with the terms of the Purchase Contract and Pledge Agreement (as defined below), and (a) a 1/10th, or 10%, undivided beneficial ownership interest in one share of the Company’s Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share (the “Mandatory Convertible Preferred Securities”) (the Purchase Contracts together with the Mandatory Convertible Preferred Stock, in the form of Corporate Units, the “Securities”). The Mandatory Convertible Preferred Securities will automatically convert into shares of Common Stock on the second business day immediately following the last trading day of the “mandatory averaging period” (the “Underlying Securities”). The Purchase Contracts will be issued under a Purchase Contract and Pledge Agreement dated as of the Closing Date (the “Purchase Contract and Pledge Agreement”) among the Company and U.S. Bank National Association, as Purchase Contract Agent, Collateral Agent, Custodial Agent and Securities Intermediary. The Mandatory Convertible Preferred Securities will be established by a Certificate of Designations to the Company’s Amended and Restated Certificate of Incorporation (the “Certificate of Designations”) to be filed with the Secretary of State of Delaware on or before April 19, 2021. The holders of the Corporate Units will pledge their interests in the Mandatory Convertible Preferred Securities forming a part of the Corporate Units to the Collateral Agent under the Purchase Contract and Pledge Agreement to secure their obligations under the Purchase Contracts to purchase shares of Common Stock. With your permission, all assumptions and statements of reliance herein have been made without any independent investigation or verification on our part, and we express no opinion with respect to the subject matter or accuracy of such assumptions or items relied upon.

In connection with this opinion, we have (i) investigated such questions of law, (ii) examined the originals or certified, conformed, facsimile, electronic or reproduction copies of such agreements, instruments, documents and records of the Company, such certificates of public officials and such other documents and (iii) received such information from officers and representatives of the Company and others as we have deemed necessary or appropriate for the purposes of this opinion.

We have examined, among other documents, the following:

- (a) the Registration Statement;
- (b) the Prospectus;

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- (c) specimen copies of the certificates representing the Corporate Units, the “Series A Treasury Units,” the “Series A Cash Settled Units,” and the Mandatory Convertible Preferred Securities (each included as Exhibits 4.2, 4.3, .4.4 and 4.5, respectively, to the Current Report on Form 8-K of the Company filed with the Securities and Exchange Commission herewith (the “Form 8-K”));
  - (d) the Certificate of Designations with respect to the Mandatory Convertible Preferred Securities (the “Certificate of Designations”) filed with the Secretary of State of the State of Delaware on April 19, 2021 and included as Exhibit 3.1 to the Form 8-K;
  - (e) the Underwriting Agreement, dated April 13, 2021 (the “Underwriting Agreement”), among the Company and the Underwriters named on Schedule I thereto, pursuant to which the Corporate Units are being sold;
  - (f) the Purchase Contract and Pledge Agreement;
  - (g) true and correct copies of the Amended and Restated Certificate of Incorporation of the Company, dated August 3, 2015, as further amended by the Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company, dated May 7, 2019 (the “Certificate of Incorporation”);
  - (h) true and correct copies of the Amended and Restated Bylaws of the Company, as amended and restated through January 26, 2018 (the “Bylaws”); and
  - (i) resolutions of the board of directors of the Company relating to, among other things, the authorization and issuance of the Corporate Units, the Purchase Contracts, and the Mandatory Convertible Preferred Securities.

The documents referred to in items (c) through (f), inclusive, are referred to collectively herein as the “Documents.”

In all such examinations, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of original and certified documents and the conformity to original or certified documents of all copies submitted to us as conformed, facsimile, electronic or reproduction copies. As to various questions of fact relevant to the opinion expressed herein, we have relied upon, and assume the accuracy of, certificates and oral or written statements and other information of or from public officials and officers and representatives of the Company.

To the extent it may be relevant to the opinions expressed below, we have assumed that (i) all of the parties to the Documents (other than the Company) are validly existing and in good standing under the laws of their respective jurisdictions of organization, (ii) all of the parties to the Documents (other than the Company) have the power and authority to (a) execute and deliver the Documents, (b) perform their obligations thereunder, and (c) consummate the transactions contemplated thereby, (iii) each of the Documents has been duly authorized, executed and delivered by all of the parties thereto (other than the Company), (iv) each of the Documents constitutes a valid and binding obligation of all the parties thereto (other than as expressly addressed in the opinion below as to the Company), enforceable against such parties in accordance with their respective terms, and (vi) all of the parties to the Documents will comply with all of their obligations under the Documents and all laws applicable thereto.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The Corporate Units, including the Purchase Contracts forming a part thereof, have been duly authorized by the Company and issued, and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.
2. The Mandatory Convertible Preferred Securities have been duly authorized by the Company and, when issued and delivered, will be validly issued, fully paid and nonassessable.
3. The Common Stock has been duly authorized and reserved by all requisite corporate action on the part of the Company and, when issued upon conversion of the Mandatory Convertible Preferred Securities in accordance with the Certificate of Designations and as contemplated by the Registration Statement, will be validly issued, fully paid and nonassessable.

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The opinions set forth above are subject to the following qualifications: (i) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws (or related judicial doctrines) now or hereafter in effect affecting creditors' rights and remedies generally, (ii) general principles of equity including, without limitation, standards of materiality, good faith, fair dealing and reasonableness, equitable defenses and limits as to the availability of equitable remedies, whether such principles are considered in a proceeding at law or in equity, and (iii) the application of any applicable fraudulent conveyance, fraudulent transfer, fraudulent obligation, or preferential transfer law or any law governing the distribution of assets of any person now or hereafter in effect affecting creditors' rights and remedies generally.

The opinions expressed herein are limited to the applicable provisions of the General Corporation Law of the State of Delaware and the laws of the State of New York as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinion expressed herein. The opinions expressed herein are limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated herein. We undertake no responsibility to update or supplement this letter after the effectiveness of the Registration Statement.

We hereby consent to the filing of this opinion as an exhibit to the Form 8-K and to the references to this firm under the caption "Legal Matters" in the prospectus that is included in the Registration Statement. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ FRIED, FRANK, HARRIS, SHRIVER & JACOBSON  
LLP

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP



FORM 8-K

APRIL 12, 2021

**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): April 12, 2021**

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

**DE**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
Commission  
File Number

**35-2108964**  
(I.R.S. Employer  
Identification No.)

**801 East 86th Avenue**  
**Merrillville, IN**  
(Address of principal executive offices)

**46410**  
(Zip Code)

**Registrant's telephone number, including area code (877) 647-5990**

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:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
<b>Common Stock, par value \$0.01 per share</b>	<b>NI</b>	<b>NYSE</b>
<b>Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share</b>	<b>NI PR B</b>	<b>NYSE</b>

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

Emerging growth company

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

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**Item 7.01. Regulation FD Disclosure.**

- (a) On April 12, 2021, NiSource Inc. (the “Company”) issued a press release announcing its intention to offer to sell, subject to market and other conditions, 7,500,000 Equity Units, each with a stated amount of \$100. Each Equity Unit will initially be in the form of a Corporate Unit consisting of a contract to purchase shares of the Company’s common stock in the future and a 1/10th, or 10%, undivided beneficial ownership interest in one share of Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share.
- (b) In addition, in connection with the offering of the Equity Units, the Company provided a preliminary estimate of its net income available to common shareholders (also referred to as earnings per share) as of March 31, 2021.

The following estimates are not a comprehensive statement of the Company’s financial condition or results for the period ended March 31, 2021. The Company’s actual results for the three months ended March 31, 2021 may differ materially from these estimates, which are given only as of the date hereof, as a result of the completion of its financial closing procedures, final adjustments and other developments, which may arise between now and the time that its financial results for the three months ended March 31, 2021 are finalized. This information is inherently uncertain.

As of the date hereof, the Company estimates that its net income available to common shareholders (also referred to as earnings per share) as of March 31, 2021 was between \$0.70 and \$0.74.

The preliminary financial estimates provided herein have been prepared by, and are the responsibility of, management. Neither Deloitte & Touche LLP, the Company’s independent registered public accounting firm, nor any other independent accountants have audited, reviewed, compiled, or performed any procedures with respect to the accompanying preliminary financial data.

Accordingly, Deloitte & Touche LLP does not express an opinion or any form of assurance with respect thereto and assumes no responsibility for, and disclaims any association with, this information.

A copy of the press release is attached as Exhibit 99.1 and the information set forth therein is incorporated herein by reference and constitutes a part of this report. The information included in this Item 7.01 of this report and the press release attached hereto as Exhibit 99.1 are for informational purposes only and do not constitute an offer to sell the Equity Units.

The information furnished in this Item 7.01 (including Exhibit 99.1) shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and is not incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	<a href="#">Press Release Announcing Equity Units Offering, dated April 12, 2021, issued by NiSource Inc.</a>
104	Cover page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

NiSource Inc.  
\_\_\_\_\_  
(Registrant)

Date: April 13, 2021

By: \_\_\_\_\_  
/s/ Donald E. Brown  
Donald E. Brown  
Executive Vice President and Chief Financial Officer



April 12, 2021

**FOR ADDITIONAL INFORMATION**

**Media**  
Dave Rau  
Corporate Media Relations  
(614) 493-8657  
drau@nisource.com

**Investors**  
Randy Hulen  
Vice President, Investor Relations and Treasurer  
(219) 647-5688  
rghulen@nisource.com

**NiSource Inc. Announces Equity Units Offering  
Provides Update to 2021-2024 financing strategy**

MERRILLVILLE, Ind. - NiSource Inc. (NYSE: NI) (“NiSource”) announced today its intention to offer to sell, subject to market and other conditions, 7,500,000 Equity Units, each with a stated amount of \$100. Each Equity Unit will initially be in the form of a Corporate Unit consisting of a contract to purchase shares of NiSource common stock (the “Common Stock”) in the future and a 1/10th, or 10%, undivided beneficial ownership interest in one share of Series C Mandatory Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share (the “Mandatory Convertible Preferred Stock”). NiSource expects to grant the underwriters an option to purchase 1,125,000 additional Corporate Units to cover over-allotments. In addition, NiSource has updated its financing strategy for 2021-2024:

(\$ millions)	2021E	2022E	2023E	2024E
<b>Planned Annual Safety &amp; Modernization Investments</b>				
<b>Equity</b>				
ATM (At-the-Market)	\$200 - \$300	\$200 - \$300	<del>\$200 - \$300</del> <i>Reduced to \$0 - \$150</i>	
ESPP/401K/Other	\$30 - \$50 Annually			
<b>Long-Term Debt</b>				
Incremental Long-Term Debt	\$500 - \$700 Annually			
<b>Planned Renewable Generation Investments: (Targeting 60% Equity)</b>				
<b>Equity</b>				
Common Equity Block	<del>\$500 - \$700 Total</del> <i>No Longer Planned</i>			
<b>Long-Term Debt</b>				
Incremental Long-Term Debt	~\$800 Total			
<b>Other Financing</b>				
Convertible	\$600 - \$1,000 Total <i>Satisfied</i>			

The offering is expected to satisfy all anticipated discrete equity needs of NiSource through 2024 (except for issuances under its existing programmatic ATM program) and eliminates the need for the discrete (block) equity issuance NiSource originally planned for calendar years 2022 or 2023.

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**Further Details of Equity Units Offering:**

Pursuant to the offering, the Common Stock is expected to be delivered upon settlement of the purchase contracts on December 1, 2023 (subject to early settlement in certain circumstances).

NiSource expects to pay, quarterly in arrears, contract adjustment payments on the stated amount of each Equity Unit at a rate to be determined in connection with the offering. NiSource may pay such contract adjustment payments in cash, shares of Common Stock or a combination of cash and shares of Common Stock, at its election. NiSource may also, in its discretion, defer contract adjustment payments.

The Mandatory Convertible Preferred Stock is expected to be remarketed either as part of an optional remarketing elected by us or during a final remarketing period. Following any successful remarketing, dividends may become payable on the Mandatory Convertible Preferred Stock and/or the minimum conversion rate of the Mandatory Convertible Preferred Stock may be increased. The Mandatory Convertible Preferred Stock initially will not bear any dividends and the liquidation preference of the Mandatory Convertible Preferred Stock will not accrete.

Each share of Mandatory Convertible Preferred Stock may be converted only after being separated from the Corporate Units and, prior to December 1, 2023, only upon the occurrence of certain fundamental change events (unless a remarketing failure as described below has previously occurred).

Each share of Mandatory Convertible Preferred Stock, unless previously converted, will automatically convert on the mandatory conversion date (which is expected to be on or about March 1, 2024) into a variable number of shares of Common Stock as determined in the offering. However, if no successful remarketing of the Mandatory Convertible Preferred Stock has previously occurred, effective as of December 1, 2023, the conversion rate will be zero, no shares of Common Stock will be delivered upon automatic conversion and each share of Mandatory Convertible Preferred Stock will be automatically transferred to NiSource on the mandatory conversion date without any payment of cash or shares of the Common Stock thereon. In the event of such a remarketing failure, any shares of Mandatory Convertible Preferred Stock held as part of Corporate Units will be automatically delivered to NiSource on December 1, 2023 in full satisfaction of the relevant holder's obligation under the related purchase contracts.

NiSource intends to use the net proceeds from the offering for renewable generation investments and general corporate purposes, including additions to working capital and repayment of existing indebtedness. The offering is consistent with NiSource meeting its near and long-term financial plan. The Equity Unit structure of this offering allows NiSource to retain share price upside while aligning the expected proceeds with its renewable investment needs. Concurrently, NiSource expects to have a renewable capital expenditure requirement of approximately \$2.0 billion.

NiSource intends to apply to list the Corporate Units on the New York Stock Exchange under the symbol "NIMC."

Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Wells Fargo Securities, LLC are acting as joint book-running managers for this offering.

The offering will be made pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission. This press release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state. Any offers of the securities will be made exclusively by means of a prospectus supplement and accompanying prospectus. Copies of these documents may be obtained by contacting Goldman Sachs & Co. LLC, Attn: Prospectus Department, 200 West Street, New York, NY 10282, by phone at (866) 471-2526 or by email at [prospectus-ny@ny.email.gs.com](mailto:prospectus-ny@ny.email.gs.com); J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, via telephone at 1-866-803-9204 or via email at [prospectus-eq\\_fi@jpmchase.com](mailto:prospectus-eq_fi@jpmchase.com); and Wells Fargo Securities at 500 West 33rd Street, New York, New York, 10001, Attn: Equity Syndicate Department, by calling toll free 1-800-326-5897, or by e-mail at [cmclientsupport@wellsfargo.com](mailto:cmclientsupport@wellsfargo.com).

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## **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 7,500 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve.

## **Forward-Looking Statements**

This press release contains "forward-looking statements," within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially.

Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include, among other things, our ability to execute our business plan or growth strategy, including utility infrastructure investments; potential incidents and other operating risks associated with our business; our ability to adapt to, and manage costs related to, advances in technology; impacts related to our aging infrastructure; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the success of our electric generation strategy; construction risks and natural gas costs and supply risks; fluctuations in demand from residential and commercial customers; fluctuations in the price of energy commodities and related transportation costs or an inability to obtain an adequate, reliable and cost-effective fuel supply to meet customer demands; the attraction and retention of a qualified workforce and ability to maintain good labor relations; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; potential cyber-attacks; any damage to our reputation; any remaining liabilities or impact related to the sale of Massachusetts Business; the impacts of natural disasters, potential terrorist attacks or other catastrophic events; the impacts of climate change and extreme weather conditions; our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; adverse economic and capital market conditions or increases in interest rates; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; continuing and potential future impacts from the COVID-19 pandemic; economic conditions in certain industries; the reliability of customers and suppliers to fulfill their payment and contractual obligations; the ability of our subsidiaries to generate cash; pension funding obligations; potential impairments of goodwill; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; potential remaining liabilities related to the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; changes in taxation; and other matters set forth in Item 1, "Business," Item 1A, "Risk Factors" and Part II. Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the company's annual report on Form 10-K for the year ended December 31, 2020, some of which risks are beyond our control. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time.

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All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.



**FORM 8-K**

**FEBRUARY 22, 2021**

**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): February 22, 2021**

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

<b>DE</b> (State or other jurisdiction of incorporation)	<b>001-16189</b> (Commission File Number)	<b>35-2108964</b> (I.R.S. Employer Identification No.)
<b>801 East 86th Avenue</b> <b>Merrillville, IN</b> (Address of principal executive offices)		<b>46410</b> (Zip Code)

**Registrant's telephone number, including area code (877) 647-5990**

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))

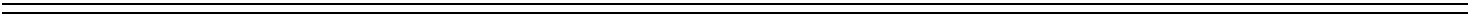
Securities registered pursuant to Section 12(b) of the Act:

<b>Title of Each Class</b>	<b>Trading Symbol(s)</b>	<b>Name of Each Exchange on Which Registered</b>
Common Stock, par value \$0.01 per share	NI	NYSE
Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE

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

Emerging growth company

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



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**Item 1.01. Entry into a Material Definitive Agreement.**

On February 22, 2021, NiSource Inc. (the “Company”) entered into six separate equity distribution agreements, each dated February 22, 2021 (the “Equity Distribution Agreements”), (i) among the Company, Barclays Capital Inc., as sales agent and forward seller, and Barclays Bank PLC, as forward purchaser, (ii) among the Company, J.P. Morgan Securities LLC, as sales agent and forward seller, and JPMorgan Chase Bank, National Association, as forward purchaser, (iii) between the Company and KeyBanc Capital Markets Inc., in its capacities as sales agent, forward seller and forward purchaser, (iv) among the Company, Mizuho Securities USA LLC, as sales agent and forward seller, and Mizuho Markets Americas LLC, as forward purchaser, (v) between the Company and Morgan Stanley & Co. LLC, in its capacities as sales agent, forward seller and forward purchaser, and (vi) among the Company, Wells Fargo Securities, LLC, as sales agent (collectively with the other sales agents, the “Agents”) and forward seller, and Wells Fargo Bank, National Association, as forward purchaser, relating to issuances, offers and sales of shares of the Company’s common stock, par value \$0.01 per share. In accordance with the terms of the Equity Distribution Agreements, the Company may offer and sell up to an aggregate of \$750,000,000 of its common stock (including shares of common stock that may be sold pursuant to the forward sale agreements described below, the “Shares”) from time to time through any of the Agents, acting in their capacity as sales agents or as forward sellers, as described below. The sales of Shares under the Equity Distribution Agreements will be made in transactions that are deemed to be “at-the-market” offerings, including sales made by means of ordinary brokers’ transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale or as agreed to with the applicable Agent and any related forward seller and forward purchaser.

The Equity Distribution Agreements provide that, in addition to the issuance and sale of the shares by the Company through the Agents in their capacity as Agents, the Company may enter into forward sale agreements with the Agents or certain of their respective affiliates (when acting in its capacity under such a forward sale agreement, a “Forward Purchaser”). Concurrently with, and pursuant to, the Equity Distribution Agreements, the Company entered into six separate master forward sale confirmations (the “Master Forward Sale Confirmations”), each dated February 22, 2021, with Barclays Bank PLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Morgan Stanley & Co. LLC and Wells Fargo Bank, National Association, respectively, as forward purchasers. In connection with each forward sale agreement under a Master Forward Sale Confirmation, the relevant Forward Purchaser will, at the Company’s request, borrow from third parties and, through the relevant Agent, sell a number of Shares equal to the number of Shares underlying the particular forward sale agreement to hedge the forward sale agreement (each Agent, when acting as agent for a Forward Purchaser, a “Forward Seller”).

The Company will not initially receive any proceeds from the sale of borrowed shares of the Company’s common stock by a Forward Seller. The Company expects to receive proceeds from the sale of Shares by a Forward Seller upon future physical settlement of the relevant forward sale agreement with the relevant Forward Purchaser on dates specified by the Company on or prior to the maturity date of the relevant forward sale agreement. If the Company elects to cash settle or net share settle a forward sale agreement, the Company may not (in the case of cash settlement) or will not (in the case of net share settlement) receive any proceeds, and the Company may owe cash (in the case of cash settlement) or shares of common stock (in the case of net share settlement) to the relevant Forward Purchaser.

The Agents will offer the Shares at market prices prevailing at the time of sale. The Company will pay each Agent a commission of up to 2% of the sales price of all Shares issued by the Company and sold through the relevant Agent under the applicable Equity Distribution Agreement. The remaining sales proceeds, after deducting any expenses payable by the Company and any transaction fees imposed by any governmental, regulatory or self-regulatory organization in connection with the sales, will be the Company’s net proceeds for the sale of the Shares. In connection with each forward sale agreement, the relevant Forward Seller will receive, in the form of a reduced initial forward sale price payable by the relevant Forward Purchaser under its forward sale agreement, a commission of up to 2% of the volume weighted average of the sales prices of all borrowed shares of Common Stock sold during the applicable period by it as a Forward Seller.

The Shares will be issued pursuant to the Company’s automatic shelf registration statement filed with the Securities and Exchange Commission on November 1, 2019 (File No. 333-234422), a base prospectus, dated November 1, 2019, included as part of the registration statement, and a prospectus supplement, dated February 22, 2021, filed with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act of 1933, as amended.

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The foregoing description of the Equity Distribution Agreements and the Master Forward Sale Confirmations does not purport to be complete and is qualified in its entirety by reference to the terms and conditions of the forms of Equity Distribution Agreement and Master Forward Sale Confirmation, which are filed as Exhibits 1.1 and 1.2, respectively, and are incorporated by reference into this Item 1.01.

**Item 8.01. Other Items.**

On February 22, 2021, the Company issued a press release announcing the establishment of an “at-the-market” equity offering program. The Company’s press release, dated February 22, 2021, is filed as Exhibit 99.1 and is incorporated by reference into this Item 8.01.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
1.1	<a href="#">Form of Equity Distribution Agreement</a>
1.2	<a href="#">Form of Master Forward Sale Confirmation</a>
5.1	<a href="#">Opinion of Sidley Austin LLP regarding the legality of the Shares</a>
23.1	<a href="#">Consent of Sidley Austin LLP (included in Exhibit 5.1)</a>
99.1	<a href="#">Press release, dated February 22, 2021, issued by NiSource Inc.</a>
104	Cover page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

NiSource Inc.  
\_\_\_\_\_  
(Registrant)

Date: February 22, 2021

By: \_\_\_\_\_  
/s/ Donald E. Brown  
Donald E. Brown  
Executive Vice President and Chief Financial Officer

**Exhibit 1.1**

**NISOURCE INC.**  
**COMMON STOCK, PAR VALUE \$0.01 PER SHARE**  
**EQUITY DISTRIBUTION AGREEMENT**

February 22, 2021

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February 22, 2021

To: [●]

Ladies and Gentlemen:

NiSource Inc., a Delaware corporation (the “**Company**”), proposes from time to time (i) to issue and sell shares (the “**Primary Shares**”) of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), through [●] (the “**Manager**”), acting as sales agent, and (ii) in consultation with the Forward Purchaser (as defined below) and the Manager, to instruct borrowed shares (the “**Forward Hedge Shares**”, and together with the Primary Shares, the “**Shares**”) of Common Stock to be sold through the Manager, acting in its capacity as agent for the Forward Purchaser as forward seller (the “**Forward Seller**”) for [●] (the “**Forward Purchaser**”) in connection with one or more Confirmations (as defined below), in each case on the terms set forth in this equity distribution agreement (this “**Agreement**”).

The Company has also entered into Equity Distribution Agreements (collectively, the “**Alternative Equity Distribution Agreements**”), each dated as of even date herewith, with each of [●],[●], [●] and [●] (each, in its capacity as sales agent and as forward seller thereunder, an “**Alternative Manager**”) [and each of their related Alternative Forward Purchaser (as defined below)] for the issuance and/or sale from time to time through the Alternative Managers of Shares on the terms set forth in the Alternative Equity Distribution Agreements and also may enter into one or more forward stock purchase transactions (collectively, the “**Alternative Confirmations**”) with [●],[●],[●] or [●] as a forward purchaser thereunder (the “**Alternative Forward Purchasers**”). This Agreement and the Alternative Equity Distribution Agreements are collectively referred to herein as the “**Equity Distribution Agreements**.” The Company, the Manager, the Forward Seller and the Forward Purchaser understand that the aggregate gross sales price of Shares to be sold pursuant to the Equity Distribution Agreements shall not exceed \$750,000,000 in the aggregate (the “**Maximum Program Amount**”).

The Company may enter into one or more forward stock purchase transactions with the Forward Purchaser as set forth in the applicable Confirmations. In connection therewith, the Forward Purchaser, through the Forward Seller, will effect sales of Forward Hedge Shares on the terms set forth in Section 2 of this Agreement. “**Confirmation**” means, for each Forward Sale (as defined below), the contract evidencing such Forward Sale between the Company and the Forward Purchaser, which shall be comprised of the Master Confirmation for Forward Sale, dated as of the date hereof, by and between the Company and the Forward Purchaser, including all provisions incorporated by reference therein (the “**Master Forward Confirmation**”), and the related “**Supplemental Confirmation**” and “**Pricing Report**” (each, as defined in the Master Forward Confirmation).



The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement (File No. 333-234422), including a prospectus, on Form S-3, relating to the securities (the “**Shelf Securities**”), including the Shares, to be issued from time to time by the Company and/or to be sold through the Manager, the Forward Seller or the Alternative Managers as forward sellers pursuant to the Equity Distribution Agreements. 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**”), 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 final prospectus supplement, relating to the Shares, filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act on or before the second business day after the date hereof, in the form furnished by the Company to the Manager, the Forward Seller or the Forward Purchaser, as applicable, 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 below), if any. Notwithstanding the foregoing, if any revised basic prospectus, prospectus supplement or prospectus shall be provided to the Manager, the Forward Seller or the Forward Purchaser, as applicable, by the Company for use in connection with the offering and sale of the Shares which differs from the Basic Prospectus, Prospectus Supplement or Prospectus, as the case may be (whether or not such revised basic prospectus, prospectus supplement or prospectus is required to be filed by the Company pursuant to Rule 424(b) under the Securities Act), the terms “**Basic Prospectus**,” “**Prospectus Supplement**” and “**Prospectus**” shall refer to such revised basic prospectus, prospectus supplement or prospectus, as the case may be, from and after the time it is first provided to the Manager, the Forward Seller or the Forward Purchaser, as applicable, for such use. 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 Manager, the Forward Seller or the Forward Purchaser, as applicable, in accordance with Section 6(b), and “**broadly available road show**” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person. 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 as of the date hereof. 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 (the “**Incorporated Documents**”).

1. *Representations and Warranties.* The Company represents and warrants to and agrees with the Manager, the Forward Seller and the Forward Purchaser:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect; and no proceedings for such purpose or pursuant to Section 8(A) of the Securities Act are pending before or threatened by the Commission. 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 Manager 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 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 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

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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 Manager, the Forward Seller or the Forward Purchaser, as applicable, expressly for use in the Prospectus or in the General Disclosure Package. For purposes of this Agreement, the only information so furnished in the Registration Statement, the Prospectus, the Prospectus Supplement (including any Interim Prospectus Supplement), the General Disclosure Package, any Permitted Free Writing Prospectus, 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, shall be the Manager's or the Forward Seller's, as applicable, name on the cover of the Prospectus (as applicable, the "**Manager Information**").

(d) Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus, 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 Manager, the Forward Seller or the Forward Purchaser, as applicable, 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. Each broadly available road show, if any, when considered together with the General Disclosure Package, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except for the Permitted Free Writing Prospectuses, if any, and electronic road shows, if any, furnished to and approved by the Manager, the Forward Seller or the Forward Purchaser, as applicable, 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.

(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) under the Securities Act) 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 under 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) The Company has been duly incorporated and is a validly existing corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in each of the Registration Statement, the Prospectus and the General Disclosure Package; and the Company is duly qualified to transact business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction; all of the issued and outstanding capital stock of the Company has been duly authorized and validly issued and is fully paid and nonassessable.

(g) Each significant subsidiary (as defined in Rule 405 under the Securities Act) of the Company (each direct and indirect significant subsidiary of the Company being hereinafter referred to as a “**Significant Subsidiary**” and all such direct and indirect significant subsidiaries of the Company being hereinafter referred to collectively as the “**Significant Subsidiaries**”) has been duly incorporated or duly formed and is a validly existing corporation or limited liability company, as the case may be, in good standing under the laws of the jurisdiction of its incorporation or formation, with power and authority (corporate or limited liability, and other) to own its properties and conduct its business as described in each of the Registration Statement, the Prospectus and the General Disclosure Package; and each Significant Subsidiary is duly qualified to do business as a foreign corporation or limited liability company, as the case may be, in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, or is subject to no material liability or disability by reason of the failure to be so qualified in any such jurisdiction; all of the issued and outstanding capital stock or other equity interests of each Significant Subsidiary has been duly authorized and validly issued and is fully paid and, to the extent applicable, nonassessable; and except as otherwise disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, all of the capital stock or other equity interests of each Significant Subsidiary is owned by the Company, directly or through subsidiaries, free from liens, encumbrances and defects.

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(h) The Primary Shares, any shares of Common Stock to be delivered by the Company to the Forward Purchaser pursuant to any Confirmation or to any Alternative Forward Purchaser pursuant to any Alternative Confirmation (the “**Confirmation Shares**”) and all other outstanding shares of capital stock of the Company have been duly authorized; all outstanding shares of capital stock of the Company are, and, when the Primary Shares and any Confirmation Shares have been delivered and paid for in accordance with this Agreement or any Confirmation, such shares of Common Stock will have been validly issued, fully paid and nonassessable and will conform to the descriptions thereof contained in each of the Registration Statement, the Prospectus and the General Disclosure Package; and the stockholders of the Company have no preemptive rights with respect to such shares of Common Stock.

(i) Except for the discounts and commissions payable by the Company to the Manager, the Forward Seller, the Forward Purchaser, any Alternative Manager or any Alternative Forward Purchaser in connection with the offering of the Shares contemplated herein or in any Alternative Equity Distribution Agreement or as otherwise disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company, the Forward Purchaser, the Forward Seller, or the Manager for a brokerage commission, finder’s fee or other like payment in connection with the sale of the Shares.

(j) 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 owned or to be owned by such person or to require the Company to include such securities with the securities registered pursuant to the Registration Statement or with any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(k) The outstanding shares of Common Stock are listed on The New York Stock Exchange LLC (the “**Exchange**”), and the Primary Shares and any Confirmation Shares have been approved for listing on the Exchange, subject to notice of issuance.

(l) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement and each Confirmation, in connection with the issuance and sale of the Shares by the Company, except such as have been obtained and made under the Securities Act, and such as may be required under the Federal Power Act, the Exchange Act and state securities laws.

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(m) The execution, delivery and performance of this Agreement, any Confirmation and the issuance and sale of the Shares will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, (i) the charter or by-laws of the Company or any subsidiary of the Company (each direct and indirect subsidiary of the Company being hereinafter referred to as a “**Subsidiary**” and all such direct and indirect subsidiaries of the Company being hereinafter referred to collectively as the “**Subsidiaries**”), (ii) any statute or any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any Subsidiary or any of their properties, or (iii) any agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the properties of the Company or any Subsidiary is subject, except in the case of clauses (ii) and (iii) where such violation, breach or default would not, individually or in the aggregate, have a material adverse effect on the condition (financial or other), business, properties, or results of operations of the Company and the Subsidiaries taken as a whole (“**Material Adverse Effect**”) and would not materially and adversely affect the ability of the Company to perform its obligations under this Agreement, any Confirmation, or which would otherwise be material in the context of the sale of the Shares; and the Company has full power and authority to authorize, issue and sell the Shares as contemplated by this Agreement or any Confirmation.

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

(o) Except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, the Company and the Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances and defects that would materially interfere with the use made or to be made thereof by them or would, individually or in the aggregate, have a Material Adverse Effect; and except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, the Company and the Subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them or would, individually or in the aggregate, have a Material Adverse Effect.

(p) The Company and the Subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or any of the Subsidiaries would, individually or in the aggregate, have a Material Adverse Effect.

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(q) Except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, neither the Company nor any Significant Subsidiary has any material contingent liability.

(r) Except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, there are no pending actions, suits, proceedings or investigations against or affecting the Company or any Subsidiary or any of their respective properties, assets or operations that could, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect or to affect materially and adversely the ability of the Company to perform its obligations under this Agreement and each Confirmation, or which are otherwise material in the context of the sale of the Shares; and, to the knowledge of the Company, no such actions, suits, proceedings or investigations are threatened.

(s) The financial statements of the Company included or incorporated by reference in each of the Registration Statement, the Prospectus and the General Disclosure Package present fairly the financial position of the entity presented and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and, except as otherwise disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis with all other financial statements presented for such entity; and any schedules included or incorporated by reference in each of the Registration Statement, the Prospectus and the General Disclosure Package present fairly the information required to be stated therein. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in each of the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto.

(t) Except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, since the date of the latest audited financial statements included or incorporated by reference in each of the Registration Statement, the Prospectus and the General Disclosure Package, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and the Subsidiaries taken as a whole, and, except as disclosed in or contemplated by each of the Registration Statement, the Prospectus and the General Disclosure Package, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(u) The Company is not, and after giving effect to the offering and sale of the Shares, the consummation of the transactions contemplated by any Confirmation or any Alternative Confirmation and the application of the proceeds

thereof as described in each of the Registration Statement, the Prospectus and the General Disclosure Package will not be, an “investment company” as defined in the Investment Company Act of 1940, as amended.

(v) [Reserved].

(w) The Company maintains a system of “disclosure controls and procedures” (as defined in Rule 13a-15(e) under the Exchange Act) that is designed to ensure 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 their disclosure controls and procedures as required by Rule 13a-15 under the Exchange Act.

(x) The Company maintains a system of “internal control over financial reporting” (as defined in Rule 13a-15(f) under the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with the Company’s management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(y) The Master Forward Confirmation has been duly authorized, executed and delivered by the Company and constitutes, and any Supplemental Confirmation will be 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 (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors’ rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law). The description of the Master Forward Confirmation set forth in the Prospectus and the General Disclosure Package is correct in all material respects.



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(z) Assuming that the Forward Seller complies with Rule 173 under the Securities Act in connection with the sales of Shares in an amount not greater than the Number of Shares (as defined in each applicable Confirmation), (i) the issuance and sale by the Company of the Confirmation Shares to the Forward Purchaser in settlement of any Confirmation in accordance with the terms thereof and the delivery by the Forward Purchaser or its affiliate of the Confirmation Shares during the term of and at settlement of any Confirmation to close out open borrowings of Common Stock created in the course of the hedging activities created by the Forward Purchaser or its affiliate relating to its exposure under any Confirmation will not require registration under the Securities Act, (ii) the Company will not have an obligation to file a prospectus supplement pursuant to Rule 424(b) under the Securities Act regulations in connection with any Confirmation Shares delivered to the Forward Purchaser or its affiliate by the Company upon such settlement, and (iii) no prospectus supplement will be required to be filed under Rule 424(b) under the Securities Act in connection with any Confirmation Shares delivered by the Forward Purchaser or its affiliate to close out open borrowings created in the course of the hedging activities created by the Forward Purchaser or its affiliate relating to its exposure under any Confirmation. Except for the Alternative Equity Distribution Agreements and as otherwise disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, the Company has not entered into any other sales agreements or other similar arrangements with any agent or any other representative in respect of at the market offerings of the Shares in accordance with Rule 415(a)(4) under the Securities Act.

(aa) (i) None of the Company or any of the Subsidiaries or any director or officer thereof, or, to the Company's knowledge, any employee, agent or representative thereof, 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 government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) ("**Government Official**") in order to influence official action, or to any person in violation of any applicable anti-corruption laws; (ii) the Company and the Subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein; and (iii) neither the Company nor the Subsidiaries will use, directly or indirectly, the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

(bb) The operations of the Company and the Subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and the Subsidiaries conduct business, the rules and regulations thereunder and any applicable related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the “**Anti-Money Laundering Laws**”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of the Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(cc) (i) None of the Company or any Subsidiary or any director or officer thereof, or, to the Company’s knowledge, any employee, agent, affiliate or representative thereof, 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 U.S. Department of the Treasury’s Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”), or

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person:

(A) 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 the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past 5 years, the Company and the Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and 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 the subject of Sanctions.

(dd) (i)(A) Except as disclosed in each of the Registration Statement, the Prospectus and the General Disclosure Package, there has been no security breach or other compromise of or relating to any of the Company's or any Subsidiary's information technology and computer systems, networks, hardware, software, data (including the data of its customers, employees, suppliers, vendors and any third-party data maintained by or on behalf of it), equipment or technology (collectively, "**IT Systems and Data**") and (B) the Company and the Subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data, except as would not, in the case of this clause (i), reasonably be expected to result in a Material Adverse Effect; (ii) the Company and the Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and (iii) the Company and the Subsidiaries have implemented backup and disaster recovery technology reasonably consistent with industry standards and practices.

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, (x) the Company and the Manager agree that the Company may from time to time issue and sell Shares through the Manager, acting as sales agent (any such sale, a "**Direct Sale**") or (y) the Company may from time to time, in consultation with the Forward Purchaser and the Forward Seller, instruct Forward Hedge Shares to be sold through the Manager, acting as forward seller (any such sale, a "**Forward Sale**").

(a) If the Company wishes that the Manager or the Forward Seller, as applicable, sell Shares, then it shall instruct the Manager or the Forward Seller, as applicable, by telephone or email (including any price, time or size limits or other customary parameters or conditions) to sell such Shares on any Trading Day (as defined below) by email using a form substantially similar to that attached hereto as Exhibit A (the "**Transaction Confirmation**"). Such Transaction Confirmation shall also specify whether such Shares will be sold through the Manager, acting as sales agent in a Direct Sale, or through the Forward Seller in connection with a Forward Sale. If the Manager, the Forward Seller or the Forward Purchaser, as applicable, wishes to accept the proposed terms included in the Transaction Confirmation (which they may decline to do for any reason in their sole discretion) or, following discussion with the Company, wishes to accept amended terms, then the Manager, the Forward Seller or the Forward Purchaser, as applicable, will issue to the Company a notice by email (or other method mutually agreed to in writing by the parties hereto) setting forth the terms that the Manager, the Forward Seller and Forward Purchaser are willing to accept. Where the terms provided in the Transaction Confirmation are amended as provided for in the

immediately preceding sentence, such terms will not be binding on the Company, the Manager or the Forward Seller and the Forward Purchaser, as applicable, until the Company confirms its acceptance of all of the terms of such Transaction Confirmation, as amended, by email or telephone, with confirmation to be provided promptly thereafter by email (or other method mutually agreed to in writing by the parties hereto), along with, to the extent necessary, a duly executed amended Supplemental Confirmation with terms corresponding to such amended Transaction Confirmation. No Transaction Confirmation may be delivered if an ex-dividend date or ex-date, as applicable for any dividend or distribution payable by the Company on the Common Stock, is scheduled to occur during the period from, and including, the first scheduled Trading Day of the related Forward Hedge Selling Period (as defined in the Transaction Confirmation) to, and including, the last scheduled Trading Day of such Forward Hedge Selling Period. No selling period for the Shares may overlap in whole or in part with any "Unwind Period" (as defined in the Transaction Confirmation) under any Confirmation or Alternative Confirmations. As used herein, "**Trading Day**" shall mean any trading day on the Exchange, other than a day on which the Exchange is scheduled to close prior to its regular closing time. The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales of Shares pursuant to this Agreement or the Alternative Equity Distribution Agreements shall be effected by or through only the Manager or the Forward Seller, as applicable, or an Alternative Manager under an Alternative Distribution Agreement, as applicable, on any single day, but in no event by more than one of them, and the Company shall in no event request that the Manager or the Forward Seller, as applicable, and the Alternative Managers sell Shares on the same day.

(b) Subject to the terms and conditions hereof and, with respect to a Forward Sale, the applicable Confirmation, the Manager or the Forward Seller, as applicable, shall use its commercially reasonable efforts to execute any Company order submitted to it hereunder to sell Shares with respect to which the Manager has agreed to act as sales agent, if a Direct Sale, or as the Forward Seller, if a Forward Sale, respectively. The Company acknowledges and agrees that (i) there can be no assurance that the Manager or the Forward Seller, as applicable, will be successful in selling the Shares; (ii) the Manager or the Forward Seller, as applicable, will incur no liability or obligation to the Company, the Forward Purchaser or any other person or entity if it does not sell Shares for any reason and (iii) the Manager or the Forward Seller, as applicable, shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement.

(c) The Company shall not authorize the issuance or sale of, and the Manager or the Forward Seller, as applicable, shall not sell, any Share at a price lower than the minimum price therefor designated by the Company pursuant to Section 2(a) of this Agreement. In addition, the Company, the Manager or the Forward Seller, as applicable, may, upon notice to the other party hereto by telephone (confirmed promptly by email), suspend an offering of the Shares pursuant to this Agreement; *provided, however*, that such suspension or termination shall not affect or impair the parties' respective obligations with

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respect to the Shares sold hereunder prior to the giving of such notice. Under no circumstances shall the aggregate offering price of Shares sold pursuant to this Agreement and the Alternative Equity Distribution Agreements exceed the Maximum Program Amount.

(d) The Manager or the Forward Seller, as applicable, shall provide written confirmation (which may be by email) to the Company following the close of trading on the Exchange each day in which Shares are sold under this Agreement setting forth (i) the amount of Shares sold on such day, (ii) the price or prices at which such Shares were sold on such day, (iii) the gross offering proceeds received from such sale, (iv) the aggregate Net Proceeds (as defined below) to the Company or the Forward Purchaser, as applicable, and (v) the commission payable by the Company to the Manager or the Forward Seller, as applicable, with respect to such sales, which shall be set forth and invoiced in periodic statements from the Manager to the Company, with payment to be made by the Company promptly after its receipt thereof.

(e) At each Time of Sale, Settlement Date and Representation Date (as defined below), the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement. Any obligation of the Manager or the Forward Seller, as applicable, to use its commercially reasonable efforts to sell the Shares on behalf of the Company as sales agent or the Forward Seller, as applicable, shall be subject to the continuing accuracy of the representations and warranties 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.

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

(g) Notwithstanding anything herein to the contrary, in the event that, in the Forward Purchaser's sole judgement, it (or its affiliate) (i) is unable, after using commercially reasonable efforts, to borrow and deliver for sale the full number of Forward Hedge Shares to be borrowed and sold pursuant to this Agreement or (ii) would incur a stock loan cost that is more than the rate set forth in the applicable Supplemental Confirmation, then the Forward Seller shall be required to sell on behalf of the Forward Purchaser (or its affiliate) only the aggregate number of Forward Hedge Shares that the Forward Purchaser (or its affiliate) is able to so borrow below such cost.

3. *Fee.* (a) (i) The compensation to the Manager for sales of the Primary Shares with respect to which the Manager acts as sales agent hereunder shall be an amount not to exceed 2.00% of the gross offering proceeds of the Shares sold pursuant to this Agreement and (ii) the compensation payable to the Forward Seller for sales of Forward Hedge Shares shall be an amount not to exceed 2.00% of the volume weighted average of the sales prices of all Forward Hedge Shares sold during the applicable period by the Forward Seller, unless the parties otherwise agree. The remaining proceeds shall constitute the net proceeds to the Company or the Forward Purchaser, as applicable, for such sales (the “**Net Proceeds**”).

(b) If this Agreement is terminated by the Company prior to December 31, 2023 in accordance with the provisions of Section 10 of this Agreement and, at the time of the Company’s notice of termination, the gross purchase price of the Shares sold pursuant to this Agreement is less than \$100,000,000, the Company shall reimburse the Manager or the Forward Seller, as applicable, for all of its reasonable out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Manager, the Forward Seller and the Forward Purchaser incurred by it in connection with the offering contemplated by this Agreement.

4. *Payment, Delivery and Other Obligations.* Settlement for sales of the Shares pursuant to this Agreement will occur on the second Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made.

(a) On each date of settlement of any Direct Sale (each such day, a “**Direct Settlement Date**”), the Primary Shares sold through the Manager for settlement on such date shall be issued and delivered by the Company to the Manager against payment by the Manager of the Net Proceeds from the sale of such Primary Shares. Settlement for all such Primary Shares shall be effected by free delivery of the Primary Shares by the Company or its transfer agent to the Manager’s or its designee’s account (*provided* that the Manager shall have given the Company 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 relevant 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. If the Company, or its transfer agent (if applicable), shall default on its obligation to deliver the Primary Shares on any Direct Settlement Date, the Company shall (i) hold the 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 the Manager any commission, discount or other compensation to which it would otherwise be entitled absent such default.

(b) On each date of settlement for any Forward Sale (each such day, a “**Forward Settlement Date**”), the Forward Hedge Shares shall be delivered by

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the Forward Purchaser (or its affiliate) to the Forward Seller in book-entry form to the Forward Seller's account at The Depository Trust Company against payment by the Forward Seller of the Net Proceeds from the sale of such Forward Hedge Shares in same day funds delivered to an account designated by the Forward Purchaser (or its affiliate), or by such other means of delivery as may be mutually agreed upon by the relevant parties hereto. For purposes of this Agreement, references to "**Settlement Date**" shall include any Direct Settlement Date and any Forward Settlement Date.

5. *Conditions to the Manager's and Forward Seller's Obligations.* The obligations of the Manager and the Forward Seller 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) 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 the Subsidiaries by any "nationally recognized statistical rating organization", as such term is defined in Section 3(a)(62) of the Exchange Act; and

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

(b) The Manager, the Forward Seller and the Forward Purchaser shall have received on each date specified in Section 6(l) of this Agreement a certificate, dated such date and signed by an executive officer or treasurer of the Company, to the effect set forth in Sections 5(a)(i) and 5(a)(ii) of this Agreement 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 or pursuant to Section 8(A) of the Securities Act 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, subsequent to the immediately preceding Representation 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, subsequent to the immediately preceding Representation 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 the Manager Information.

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

(c) (x) The Manager and, if applicable, the Forward Seller and the Forward Purchaser shall have received on each date specified in Section 6(m) of this Agreement, an opinion and negative assurance letter of outside counsel for the Company, dated such date, in form and substance reasonably satisfactory to the Manager and if applicable, the Forward Seller and the Forward Purchaser; and

(y) The Manager and, if applicable, the Forward Seller and the Forward Purchaser shall have received on each date specified in Section 6(m) of this Agreement, an opinion of internal counsel for the Company, dated such date, in form and substance satisfactory to the Manager and, if applicable, the Forward Seller and the Forward Purchaser.

The opinions of counsel for the Company described in Sections 5(c)(x) and 5(c)(y) of this Agreement shall be rendered to the Manager and, if applicable, the Forward Seller and the Forward Purchaser at the request of the Company and shall so state therein.

(d) The Manager, the Forward Seller and the Forward Purchaser shall have received on each date specified in Section 6(n) of this Agreement, an opinion and negative assurance letter of Hunton Andrews Kurth LLP, counsel for the Manager, the Forward Seller and the Forward Purchaser, dated such date, in form and substance reasonably satisfactory to the Manager.

(e) The Manager shall have received on each date specified in Section 6(o) of this Agreement, a letter dated such date in form and substance satisfactory to the Manager, 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



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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, as amended and supplemented to the date of such letter.

(f) All filings with the Commission required by Rule 424 under the Securities Act to have been filed by the Company 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)).

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

(h) 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.

6. *Covenants of the Company.* The Company covenants with the Manager, the Forward Seller and the Forward Purchaser as follows:

(a) To the extent not previously delivered or filed on the Commission's Electronic Data Gathering, Analysis and Retrieval system, to furnish to the Manager, the Forward Seller and the Forward Purchaser copies of the Registration Statement (excluding exhibits) and copies of the Prospectus (or the Prospectus as amended or supplemented) in such quantities as the Manager, the Forward Seller or the Forward Purchaser, as the case may be, may from time to time reasonably request, and, in case the Manager or the Forward Seller 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 the Manager, the Forward Seller or the Forward Purchaser, as the case may be, and at its own expense, the Company shall prepare and deliver to the Manager, the Forward Seller and the Forward Purchaser as many copies as the Manager, the Forward Seller or the Forward Purchaser may 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.

(b) Before amending or supplementing the Registration Statement or the Prospectus, to furnish to the Manager a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which the Manager, the Forward Seller and the Forward Purchaser reasonably object (other than (x) any prospectus supplement relating to the offering of Shelf Securities other than the Common Stock or (y) by means of an Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or Registration Statement on Form 8-A or any amendments to any of the foregoing filed with the Commission under the Exchange Act and incorporated or deemed incorporated by reference into the Registration Statement or the Prospectus). To furnish to the Manager, the Forward Seller and the Forward Purchaser a copy of each proposed free writing prospectus relating to the 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 to which the Manager, the Forward Seller and the Forward Purchaser reasonably object. Not to take any action that would result in the Manager, the Forward Seller or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Manager, the Forward Seller or the Forward Purchaser that the Manager, the Forward Seller or the Forward Purchaser otherwise would not have been required to file thereunder.

(c) To file 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 Manager and the Forward Seller under this Agreement and through the Alternative Managers under the Alternative Equity Distribution Agreements during such fiscal quarterly period, (ii) the Net Proceeds received by the Company from such sales and (iii) the aggregate compensation deemed paid by the Company with respect to sales of Shares pursuant to this Agreement and the Alternative Equity Distribution Agreements, together with any other information that the Company reasonably believes is required to comply with the Exchange Act or any rules or regulations thereunder (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) of this Agreement, 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 (in each case, to the extent not previously delivered or filed on the Commission’s Electronic Data Gathering, Analysis and Retrieval system or any successor system thereto) to the Manager, the Forward Seller and the Forward

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Purchaser via electronic mail in “.pdf” format on such filing date to the respective electronic mail accounts designated by the Manager, the Forward Seller and the Forward Purchaser and, at the Manager’s, the Forward Seller’s or the Forward Purchaser’s request, to also furnish copies of the Prospectus and such Prospectus Supplement to the Exchange 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 Exchange or such other exchange or market.

(e) During the Delivery Period to advise the Manager, the Forward Seller and the Forward Purchaser, 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 Manager, the Forward Seller and the Forward Purchaser by telephone (with confirmation in writing or electronic mail) and to promptly prepare and file, subject to Section 6(b) of this Agreement, 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 the extent not previously delivered or filed on the Commission’s Electronic Data Gathering, Analysis and Retrieval system, to furnish to the Manager, the Forward Seller and the Forward Purchaser as many copies as the Manager, the Forward Seller and the Forward Purchaser may reasonably request of such amendment or supplement.

(g) To use commercially reasonable efforts, to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Manager shall reasonably request and to continue such qualifications in effect so long as necessary under such laws for the distribution of the Shares.

(h) To make generally available to the Company’s security holders and to the Manager and the Forward Seller 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.

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(i) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants 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 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 the Manager, the Forward Seller and the Forward Purchaser, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 6(g) of this Agreement, including filing fees and the reasonable fees and disbursements of counsel for the Manager, the Forward Seller and the Forward Purchaser in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Manager, the Forward Seller and the Forward Purchaser incurred in connection with the initial documentation of the offering contemplated by this Agreement, including any review and qualification by the Financial Industry Regulatory Authority, Inc. (up to, together with the expenses and fees pursuant to Section 6(i) of the Alternative Equity Distribution Agreements, \$200,000 in the aggregate, subject to the terms of Section 3(b) of this Agreement), (v) all costs and expenses incident to listing the Shares on the Exchange, (vi) the costs and charges of any transfer agent, registrar or depositary, 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. It is understood, however, that except as provided in this Section 6, Section 3(b) and Section 8 of this Agreement, the Manager, the Forward Seller and the Forward Purchaser will pay all of its costs and expenses, including any advertising expenses connected with any offers the Manager, the Forward Seller and the Forward Purchaser may make.

(j) 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) of this Agreement, 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).

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(k) (i) To use its commercially reasonable efforts to cause the Primary Shares and any Confirmation Shares to be listed for trading on the Exchange; (ii) to reserve and keep available at all times, free of pre-emptive rights, Shares and any Confirmation Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement and any Confirmation; and (iii) to engage and maintain, at its expense, a registrar and transfer agent for the Shares and any Confirmation Shares.

(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 a prospectus supplement relating solely to the offering of Shelf Securities other than the Shares), (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K) or (iii) the Manager, the Forward Seller or the Forward Purchaser reasonably requests (such commencement date (and any such recommencement date, if applicable) and each such date referred to in (i), (ii) and (iii) above, a “**Representation Date**”), to furnish or cause to be furnished to the Manager, the Forward Seller and the Forward Purchaser forthwith a certificate dated and delivered as of such date, in form reasonably satisfactory to the Manager, the Forward Seller and the Forward Purchaser, 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.

(m) On each Representation Date, the Company shall cause to be furnished to the Manager and, if such Representation Date relates to the execution of a Confirmation, the Forward Seller and the Forward Purchaser, dated as of such date, in form and substance satisfactory to the Manager, the Forward Seller and the Forward Purchaser, as applicable, a written opinion of the internal and outside counsel for the Company, each as described in Section 5(c) of this Agreement, 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 each Representation Date, Hunton Andrews Kurth LLP, counsel to the Manager, the Forward Seller and the Forward Purchaser, shall furnish to the Manager, the Forward Seller and the Forward Purchaser a written opinion, dated as of such date in form and substance reasonably satisfactory to the Manager, the Forward Seller and the Forward Purchaser.

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With respect to Sections 6(m) and 6(n) of this Agreement, in lieu of delivering such an opinion for dates subsequent to the commencement of the offering of the Shares under this Agreement such counsel may furnish the Manager, the Forward Seller and the Forward Purchaser with a letter (a “**Reliance Letter**”) to the effect that the Manager, the Forward Seller and the Forward Purchaser may rely on a prior opinion delivered under Section 6(m) or Section 6(n) of this Agreement, 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 date).

(o) 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 to include additional financial information, (ii) the Company files an annual report on Form 10-K or quarterly report on Form 10-Q, (iii) there is furnished with the Commission by the Company any document which contains financial information, including any earnings release, or there is filed with the Commission any document (other than an annual report on Form 10-K or quarterly report on Form 10-Q) incorporated by reference into the Prospectus which contains additional or amended financial information or (iv) on such other dates as may be reasonably requested by the Manager, the Forward Seller and the Forward Purchaser, Deloitte & Touche LLP, independent public accountants of the Company, shall deliver to the Manager, the Forward Seller and the Forward Purchaser the comfort letter(s) described in Section 5(e) of this Agreement.

(p) To promptly reply to due diligence inquiries from the Manager, the Forward Seller or the Forward Purchaser and their respective representatives, including, without limitation, furnishing requested materials and making senior management and representatives of the Company’s registered independent accounting firm available for due diligence conference calls, upon the reasonable request of the Manager, the Forward Seller or the Forward Purchaser.

(q) That it consents to the Manager or the Forward Seller trading in the Common Stock for the Manager’s or the Forward Seller’s own account and for the account of their respective clients at the same time as sales of the Shares occur pursuant to this Agreement.

(r) That each acceptance by the Company of an offer to purchase the Shares hereunder shall be deemed to be an affirmation to the Manager or the Forward Seller and the Forward Purchaser, as applicable, that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such acceptance as though made at and 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 (i) such representations and warranties shall be deemed to relate to the Registration

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Statement and the Prospectus as amended and supplemented relating to such Shares and (ii) to the extent that such representations and warranties speak as of another date, such representations and warranties shall be true and correct as of such other date).

(s) Prior to instructing the Manager or the Forward Seller pursuant to Section 2 of this Agreement to make sales on any given day (or as otherwise agreed between the Company and the Manager or the Forward Seller), an authorized officer of the Company shall have approved the minimum price and maximum number of Shares to be sold on such day which minimum price shall not be less than the minimum consideration determined pursuant to the formula approved by the Board of Directors.

(t) Not to, or publicly disclose an intention 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 Manager or the Forward Seller pursuant to this Agreement or through the Alternative Managers pursuant to the Alternative Equity Distribution Agreements, (ii) any Confirmation Shares, (iii) 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, (iv) any shares of Common Stock or stock units issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company, including shares of Common Stock issued upon exercise of such options or (v) any shares of Common Stock or stock units issued pursuant to any non-employee director stock plan, dividend reinvestment plan or stock purchase plan of the Company, during the Delivery Period, without (A) giving the Manager or the Forward Seller 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 Manager or the Forward Seller suspending activity under this program for such period of time as requested by the Company.

7. *Covenants of the Manager and the Forward Seller.* The Manager and the Forward Seller covenant with the Company 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 the Manager or the Forward Seller that otherwise would not be required to be filed by the Company thereunder, but for the action of the Manager or the Forward Seller.

8. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless the Manager, the Forward Seller and the Forward Purchaser, their respective directors, officers, employees, agents and affiliates, and each person, if any,

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who controls the Manager, the Forward Seller or the Forward Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange 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) caused by 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 caused by 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 are caused by any such untrue statement or omission or alleged untrue statement or omission based upon the Manager Information.

(b) Each of the Manager, the Forward Seller and the Forward Purchaser agrees to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement 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 Manager, but only with reference to information relating to the Manager, the Forward Seller or the Forward Purchaser furnished to the Company in writing by the Manager, the Forward Seller or the Forward Purchaser 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.

(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) of this Agreement, such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing (but failure to so notify an indemnifying party as provided in this Section 8(c) shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced (through the forfeiture of substantive rights and defenses) as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement), 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, (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 or (iii) the named parties to any proceeding include the indemnified party and another party, and the indemnified party has legal defenses that the other party does not. 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 Manager, the Forward Seller or the Forward Purchaser, in the case of parties indemnified pursuant to Section 8(a) of this Agreement, and by the Company, in the case of parties indemnified pursuant to Section 8(b) of this Agreement. 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 (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) To the extent the indemnification provided for in Section 8(a) or 8(b) of this Agreement 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 each of Company, the Manager, the Forward Seller and the Forward Purchaser from the offering of the Shares or (ii) if the allocation provided by Section 8(d)(i) of this Agreement 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) of this Agreement but also the relative fault of each of the Company, the Manager,

the Forward Seller and the Forward Purchaser 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 each of the Company, the Manager, the Forward Seller and the Forward Purchaser in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as (i) in the case of the Company, (x) the net proceeds from the offering of the Primary Shares (before deducting expenses, if applicable, and, for the avoidance of doubt, without including proceeds from the offering of Primary Shares pursuant to the Alternative Equity Distribution Agreements) received by the Company, or (y) with respect to a Forward Sale, the proceeds that would be received by the Company upon physical settlement of each applicable Confirmation assuming that the aggregate amount payable by the Forward Purchaser under such Confirmation is equal to the aggregate amount of the net proceeds realized upon the sale of the Forward Hedge Shares with respect to such Forward Sale, (ii) in the case of the Manager, the total commissions received by the Manager in respect of the Primary Shares, (iii) in the case of the Forward Seller, the total commissions received by the Forward Seller in respect of the Forward Hedge Shares, and (iv) in the case of the Forward Purchaser, the Spread (as defined in the applicable Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) retained by the Forward Purchaser under such Confirmation. The relative fault of each of the Company, the Manager, the Forward Seller and the Forward Purchaser 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 each such party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Each of the Company, the Manager, the Forward Seller and the Forward Purchaser agrees that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d) of this Agreement. 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 Manager, the Forward Seller and the Forward Purchaser shall not be required to contribute any amount in excess of (i) the total compensation received by the Manager in connection with the sale of Shares on behalf of the Company, (ii) the total compensation received by the Forward Seller in connection with the sale of Shares on behalf of the Forward Purchaser and (iii) the Spread (as defined in the applicable Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) retained by the Forward Purchaser pursuant to the relevant Confirmation(s). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution

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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 Manager, the Forward Seller, the Forward Purchaser, any person controlling the Manager, the Forward Seller or the Forward Purchaser or any affiliate of the Manager, the Forward Seller or the Forward Purchaser 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.

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. Any such termination shall be without liability of any party to any other party, except that (i) with respect to any pending Direct Sale or Forward Sale through the Manager or the Forward Seller, respectively, the obligations of the Company, including, but not limited to, its obligations under Section 4 of this Agreement, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Section 1, Section 3(b) and Section 8 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) The Manager, the Forward Seller and the Forward Purchaser shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement 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 Direct Sale or Forward Sale through the Manager or the Forward Seller, respectively, the obligations of the Company, including, but not limited to, its obligations under Section 4 of this Agreement, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Section 1, Section 3(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) of this Agreement 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 3(b) and Section 8 of this Agreement shall remain in full force and effect.

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(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 Manager, the Forward Seller and the Forward Purchaser 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 of this Agreement.

11. *Entire Agreement.* (a) This Agreement represents the entire agreement among the Company, the Manager, the Forward Seller and the Forward Purchaser 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 Manager, the Forward Seller and the Forward Purchaser have acted and will act at arm's length and neither is an agent of, or owes any fiduciary duties to, the Company or any other person, (ii) the Manager, the Forward Seller and the Forward Purchaser owe the Company only those duties and obligations set forth in this Agreement, any Confirmations and prior written agreements (to the extent not superseded by this Agreement), if any, (iii) none of the activities of the Manager, the Forward Seller or the Forward Purchaser in connection with the transactions contemplated herein constitutes a recommendation, investment advice, or solicitation of any action by the Manager, the Forward Seller or the Forward Purchaser with respect to any entity or natural person, and (iv) the Manager, the Forward Seller and the Forward Purchaser may each have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Manager, the Forward Seller or the Forward Purchaser arising from an alleged breach of fiduciary duty in connection with the sale and distribution of the Shares.

12. *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, email, 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., [www.docusign.com](http://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.

13. *Applicable Law.* This Agreement and any claims, controversy or dispute relating to or arising out of this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *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.

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15. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Manager or the Forward Seller shall be delivered, mailed or sent to [●]; if to the Forward Purchaser shall be delivered, mailed or sent to [●]; and if to the Company shall be delivered, mailed or sent to 801 East 86th Avenue, Merrillville, Indiana 46410, Attention: Randy Hulen, with a copy to the outside counsel for the Company, Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603, Attention: Lindsey Smith.

16. *No Assignment; Parties.* This Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by the Company, the Manager, Forward Seller or the Forward Purchaser; *provided, however,* that if the Forward Purchaser assigns, transfers or sets over its rights, title and interest, powers, privileges and remedies pursuant to Section 20 of the Master Forward Confirmation, the Forward Purchaser may assign its rights and obligations under this Agreement to such successor Forward Purchaser. The Company shall have no obligation to release the Forward Purchaser from its obligations to the Company upon any such assignment or transfer, nor shall any such assignment or transfer relieve or otherwise discharge the Forward Purchaser from its obligations to the Company. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and their respective successors and, to the extent provided in Section 8, the controlling persons, officers, directors, employees and agents and affiliates referred to in Section 8. This Agreement is not intended to confer any rights or benefits on any persons other than as set forth in Section 8 or elsewhere in this Agreement.

17. *Recognition of the U.S. Special Resolution Regimes.* (a) In the event that the Manager, the Forward Seller or the Forward Purchaser that is a Covered Entity (as defined below) becomes subject to a proceeding under a U.S. Special Resolution Regime (as defined below), the transfer from such Manager, Forward Seller or 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.

(a) In the event that the Manager, the Forward Seller or the Forward Purchaser that is a Covered Entity or a BHC Act Affiliate (as defined below) of such Manager, Forward Seller or Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined below) under this Agreement that may be exercised against such Manager, Forward Seller or 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.

As used in this Section 17:

“**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).

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**“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.

*[Signature page follows]*

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Very truly yours,

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:

Accepted as of the date first written above

[●],  
as Manager

By: \_\_\_\_\_  
Name:  
Title:

[●],  
as Forward Seller

By: \_\_\_\_\_  
Name:  
Title:

[●],  
as Forward Purchaser

By: \_\_\_\_\_  
Name:  
Title:

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**SCHEDULE I**

**Permitted Free Writing Prospectuses**

I-1



Exhibit A

[[•] Letterhead]

\_\_\_\_\_, 20[•]

[ ]

[ ]

Attention: \_\_\_\_\_

VIA ELECTRONIC MAIL

**TRANSACTION CONFIRMATION**

Dear \_\_\_\_\_:

This Transaction Confirmation sets forth the terms of the agreement of [•] ([in its capacity as agent for the Company in connection with any Direct Sale of Primary Shares thereunder, the “**Manager**,”] [and] [in its capacity as agent for the Forward Purchaser in connection with any Forward Sale of Forward Hedge Shares thereunder, the “**Forward Seller**”]; [and [•] (as purchaser under any Forward Sale, the “**Forward Purchaser**”) with NiSource Inc. (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 \$750,000,000 pursuant to the Equity Distribution Agreement among the Company, the Forward Purchaser and the Manager, dated February 22, 2021 (the “**Agreement**”). Unless otherwise defined below, capitalized terms defined in the Agreement shall have the same meanings when used herein.

This Transaction Confirmation relates to [a Direct Sale] [a Forward Sale].

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

[Number of Shares to be sold][Aggregate Gross Price of  
Shares to be sold]: \_\_\_\_\_  
Minimum price at which Shares may be sold: \_\_\_\_\_  
Date(s) on which Shares may be sold: \_\_\_\_\_  
Compensation to Manager or Forward Seller, as applicable (if  
different than the Agreement): \_\_\_\_\_  
[To Add Other Applicable Terms for Forward Sale] \_\_\_\_\_

The transaction set forth in this Transaction Confirmation will not be binding on the Company or the Manager or the Forward Seller, as applicable, unless and until (i) in the case of a Direct Sale, the Company delivers its Acceptance or (ii) in the case of a Forward Sale, the Company delivers its Acceptance and a duly executed Supplemental Confirmation; *provided, however*, that, in either case, neither the Company nor the Manager or the Forward Seller, as applicable, will be bound by the terms of this Transaction Confirmation unless the Company delivers its Acceptance by [●] a.m./p.m. (New York time) on [the date hereof \_\_\_\_\_, 20[●]].

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,

[●],  
As Manager

By: \_\_\_\_\_  
Name:  
Title:

[●],  
As Forward Purchaser

By: \_\_\_\_\_  
Name:  
Title:

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[●],  
As Forward Seller

By: \_\_\_\_\_  
Name:  
Title:

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ACCEPTED as of the date  
first above written

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:

**[Note: The Company's Acceptance may also be evidenced by a separate written acceptance referencing this Transaction Confirmation and delivered in accordance with the Agreement]**

**Exhibit 1.2**

**To:** NiSource Inc.  
**A/C:** [ ]  
**From:** [Dealer]  
**Re:** Issuer Share Forward Sale Transactions  
**Ref. No:** [ ]  
**Date:** February 22, 2021

Ladies and Gentlemen:

The purpose of this communication (this “**Master Confirmation**”) is to set forth the terms and conditions of the transactions to be entered into from time to time between [ ] (“**Dealer**”), through its agent [ ] (the “**Agent**”), and NiSource Inc. (“**Counterparty**”) in accordance with the terms of the Equity Distribution Agreement, dated as of February 22, 2021 (the “**Equity Distribution Agreement**”), among [the Agent][ ], as manager, Dealer, and Counterparty on the Trade Dates specified herein (collectively, the “**Transactions**,” and each, a “**Transaction**”). This communication constitutes a “Confirmation” as referred to in the Agreement specified below. Each Transaction will be evidenced by a supplemental confirmation (each, a “**Supplemental Confirmation**”) substantially in the form of Exhibit A hereto and a pricing report furnished by Dealer pursuant thereto (each, a “**Pricing Report**”) substantially in the form of Exhibit B hereto. Each such Supplemental Confirmation and Pricing Report, together with this Master Confirmation, will be a “**Confirmation**” for purposes of the Agreement specified below. Each Confirmation will be a confirmation for purposes of Rule 10b-10 promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

1. Each Confirmation is subject to, and incorporates, the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). For purposes of the Equity Definitions, each Transaction will be deemed to be a Share Forward Transaction.

Each Confirmation shall supplement, form a part of and be subject to an agreement (the “**Agreement**”) in the form of the 2002 ISDA Master Agreement (the “**ISDA Form**”), as published by ISDA, as if Dealer and Counterparty had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of New York law (without regard to New York’s choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law (the “**General Obligations Law**”) as the governing law and US Dollars (“**USD**”) as the Termination Currency and (ii) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Agreement shall apply to Dealer and Counterparty with a “Threshold Amount” in respect of Dealer of 3% of the stockholders’ equity of [Dealer/Dealer’s Parent] and a “Threshold Amount” in respect of Counterparty of USD [50 million]; provided that (x) the

words “, or becoming capable at such time of being declared,” shall be deleted from clause (1) thereof and (y) “Specified Indebtedness” has 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 Dealer’s banking business and (z) the following language shall be added to the end of such Section 5(a)(vi): “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;”).

All provisions contained in the Agreement are incorporated into and shall govern each Confirmation except as expressly modified below. Each Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the relevant Transaction and replaces any previous agreement between the parties with respect to the subject matter hereof.

The Transactions hereunder shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer or any of its Affiliates and Counterparty or any confirmation or other agreement between Dealer or any of its Affiliates and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer or any of its Affiliates and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer or such other Affiliates and Counterparty are parties, the Transactions shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement. In the event of any inconsistency among the Agreement, this Master Confirmation, any Supplemental Confirmation, any applicable Pricing Report and the Equity Definitions, the following will prevail in the order of precedence indicated: (i) such Pricing Report, (ii) such Supplemental Confirmation; (iii) this Master Confirmation; (iv) the Equity Definitions; and (v) the Agreement.

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 for such Transaction, to be, subject to the provisions opposite the caption “Early Valuation” below, the last Trading Day of the Forward Hedge Selling Period for such Transaction.
Effective Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that is one Settlement Cycle following the Trade Date for such Transaction, or such later date on which the conditions set forth in Section 3 of this Master Confirmation shall have been satisfied.

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Buyer:	Dealer
Seller:	Counterparty
Trading Day:	Any Scheduled Trading Day for the Exchange other than a day on which the Exchange is scheduled to close prior to its Scheduled Closing Time.
Forward Hedge Selling Period:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be a period of consecutive Trading Days following the date of such Supplemental Confirmation; <i>provided</i> that, if prior to the scheduled end of any Forward Hedge Selling Period (x) any event occurs that would permit the Dealer to designate a Scheduled Trading Day as an Early Valuation Date or (y) a Bankruptcy Termination Event occurs, then the Forward Hedge Selling Period shall immediately terminate at the first such occurrence.
Maturity Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day).
Shares:	The shares of common stock, par value USD 0.01 per Share, of Counterparty (Ticker: "NI")
Number of Shares:	For each Transaction, initially, as specified in the Supplemental Confirmation for such Transaction, to be the number of Shares equal to the Actual Sold Forward Amount for the Forward Hedge Selling Period for such Transaction, as reduced on each Relevant Settlement Date (as defined under "Settlement Terms" below) by the number of Settlement Shares to which the related Valuation Date relates.
Actual Sold Forward Amount:	For each Transaction and the related Forward Hedge Selling Period, the number of Forward Hedge Shares that the Dealer (or its agent or affiliate) sold pursuant to the Equity Distribution Agreement during such Forward Hedge Selling Period.
Forward Hedge Share:	For each Transaction, any Share borrowed by the Dealer (or its agent or affiliate) and sold pursuant to the Equity Distribution Agreement by the Dealer (or its agent or affiliate) in connection with such Transaction.

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Settlement Currency:	USD
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Forward Price:	<p>For each Transaction, on the Effective Date for such Transaction, the Initial Forward Price for such Transaction, and on any calendar day thereafter, the product of the Forward Price for such Transaction on the immediately preceding calendar day and <math>1 + \text{the Daily Rate} * (1/365)</math>; <i>provided</i> that the Forward Price for such Transaction on each Forward Price Reduction Date for such Transaction shall be the Forward Price for such Transaction otherwise in effect on such date <i>minus</i> the Forward Price Reduction Amount for such Forward Price Reduction Date.</p> <p>Notwithstanding the foregoing, to the extent Counterparty delivers Shares hereunder on or after a Forward Price Reduction Date and at or before the record date for an ordinary cash dividend with an ex-dividend date corresponding to such Forward Price Reduction Date (and, for the avoidance of doubt, the related dividend will be paid on such Shares), the Calculation Agent shall adjust the Forward Price to the extent it determines that such an adjustment is appropriate and necessary to preserve the economic intent of the parties by offsetting the economic effect of Dealer having received the benefit of both (i) the Forward Price Reduction Amount and (ii) the ordinary cash dividend with an ex-dividend date corresponding to such Forward Price Reduction Amount (taking into account Dealer's commercially reasonable hedge positions in respect of the Transaction).</p>
Initial Forward Price:	<p>For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the product of (i) an amount equal to 1 <i>minus</i> the Forward Hedge Selling Commission Rate applicable to such Transaction; and (ii) the Volume-Weighted Hedge Price, subject to adjustment as set forth herein.</p>



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Forward Hedge Selling Commission Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be a rate mutually agreed between the Dealer and the Counterparty but not in excess of 2%.
Volume-Weighted Hedge Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the volume-weighted average of the Sales Prices per Share of the Forward Hedge Shares sold on each Trading Day of the Forward Hedge Selling Period for such Transaction, as determined by the Calculation Agent; <i>provided</i> that, solely for the purposes of calculating the Initial Forward Price, each such Sales Price (other than the Sales Price for the last day of the relevant Forward Hedge Selling Period) shall be subject to adjustment by the Calculation Agent in the same manner as the Forward Price pursuant to the definition thereof during the period from, and including, the date one Settlement Cycle immediately following the first Trading Day of the relevant Forward Hedge Selling Period on which the Forward Hedge Shares related to such Sales Price are sold to, and including, the Effective Date of such Transaction.
Sales Price:	For each Transaction and any related Forward Hedge Share, the actual sale execution price of such Forward Hedge Share sold by Dealer on the Exchange under the Equity Distribution Agreement.
Daily Rate:	For any day, the Overnight Bank Funding Rate (or if the Overnight Bank Funding Rate is no longer available, a successor rate selected by the Calculation Agent in its commercially reasonable discretion) <i>minus</i> the Spread.
Spread:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Overnight Bank Funding Rate:	For any day, the rate set forth for such day opposite the caption "Overnight bank funding rate" as displayed on the page "OBFR01 <Index> <GO>" on the BLOOMBERG Professional Service, or any successor page; <i>provided</i> that if no such rate appears for such day on such page, the Overnight Bank Funding Rate for such day shall be such rate for the immediately preceding day for which such a rate appears.
Forward Price Reduction Dates:	For each Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be each date set forth under the heading "Forward Price Reduction Date" in the Supplemental Confirmation for such Transaction.

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Forward Price Reduction Amount:	For each Forward Price Reduction Date, the Forward Price Reduction Amount set forth opposite such date on Schedule I to the Supplemental Confirmation for such Transaction.
<b><u>Valuation:</u></b>	
Valuation Date:	For any Settlement (as defined below) with respect to any Transaction, if Physical Settlement is applicable, as designated in the relevant Settlement Notice (as defined below); or if Cash Settlement or Net Share Settlement is applicable, the last Unwind Date for such Settlement. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date.
Unwind Dates:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, each day on which Dealer (or its agent or affiliate) purchases Shares in the market in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, starting on the First Unwind Date for such Settlement.
First Unwind Date:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, as designated in the relevant Settlement Notice.
Unwind Period:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, the period starting on the First Unwind Date for such Settlement and ending on the Valuation Date for such Settlement.
Cash Settlement Valuation Disruption:	If Cash Settlement is applicable with respect to any Transaction and any Unwind Date during the related Unwind Period is a Disrupted Day, the Calculation Agent shall determine whether (i) such Disrupted Day is a Disrupted Day in full, in which case the 10b-18 VWAP for such Disrupted Day shall not be included in the calculation of the Settlement Price, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the 10b-18 VWAP for such Disrupted Day shall be determined by the Calculation Agent based on Rule 10b-18 eligible transactions (as defined below) in the Shares

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on such Disrupted Day, taking into account the nature and duration of the relevant Market Disruption Event, and the weightings of the 10b-18 VWAP and the Forward Prices, as applicable for each Unwind Date during such Unwind Period shall be adjusted in a commercially reasonable manner by the Calculation Agent for purposes of determining the Settlement Price and the Relevant Forward Price, as applicable, to account for the occurrence of such partially Disrupted Day, with such adjustments based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares.

Market Disruption Event:

The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words “at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” and inserting the words “at any time on any Exchange Business Day during the Unwind Period” after the word “material,” in the third line thereof.

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.

**Settlement Terms:**

Settlement:

With respect to any Transaction, any Physical Settlement, Cash Settlement or Net Share Settlement of all or any portion of such Transaction.

Settlement Notice:

For any Transaction, subject to “Early Valuation” below, Counterparty may elect to effect a Settlement of all or any portion of such Transaction by designating one or more Scheduled Trading Days following the Effective Date for such Transaction and on or prior to the Maturity Date for such Transaction to be Valuation Dates (or, with respect to Cash Settlements or Net Share Settlements of such Transaction, First Unwind Dates, each of which First Unwind Dates shall occur no later than the 60<sup>th</sup> Scheduled Trading Day immediately preceding the Maturity Date for such Transaction) in a written notice to Dealer (a “**Settlement Notice**”) delivered no later than the applicable Settlement Method Election Date for such

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Transaction, which notice shall also specify (i) the number of Shares (the “**Settlement Shares**”) for such Settlement (not to exceed the number of Undesignated Shares for such Transaction as of the date of such Settlement Notice) and (ii) the Settlement Method applicable to such Settlement; *provided that* (A) Counterparty may not designate a First Unwind Date for a Cash Settlement or a Net Share Settlement of any Transaction if, as of the date of such Settlement Notice, any Shares have been designated as Settlement Shares for a Cash Settlement or a Net Share Settlement of such Transaction for which the related Relevant Settlement Date has not occurred; and (B) if the number of Undesignated Shares as of the Maturity Date for such Transaction is not zero, then the Maturity Date for such Transaction shall be a Valuation Date for a Physical Settlement of such Transaction and the number of Settlement Shares for such Settlement shall be the number of Undesignated Shares for such Transaction as of the Maturity Date for such Transaction (*provided that* if such Maturity Date occurs during the period from the time any Settlement Notice is given for a Cash Settlement or Net Share Settlement of such Transaction until the related Relevant Settlement Date, inclusive, then the provisions set forth below opposite “Early Valuation” shall apply to such Transaction as if the Maturity Date for such Transaction were the Early Valuation Date for such Transaction).

Undesignated Shares:

For any Transaction, as of any date, the Number of Shares for such Transaction *minus* the number of Shares designated as Settlement Shares for Settlements of such Transaction for which the related Relevant Settlement Date has not occurred.

Settlement Method Election:

For any Transaction, applicable; *provided that*:

- (i) Net Share Settlement shall be deemed to be included as an additional settlement method under Section 7.1 of the Equity Definitions;
- (ii) Counterparty may elect Cash Settlement or Net Share Settlement for any Settlement of any Transaction only if Counterparty represents and warrants to Dealer in the Settlement Notice containing such election that, as of the date of such Settlement Notice, (A) Counterparty is not

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aware of any material nonpublic information concerning itself or the Shares, (B) Counterparty is electing the settlement method and designating the First Unwind Date specified in such Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 (“**Rule 10b-5**”) under the Exchange Act, or any other provision of the federal securities laws, (C) Counterparty is not “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”), (D) Counterparty would be able to purchase a number of Shares equal to the greater of (x) the number of Settlement Shares designated in such Settlement Notice and (y) a number of Shares with a value as of the date of such Settlement Notice equal to the product of (I) such number of Settlement Shares and (II) the applicable Forward Price on the date of such Settlement Notice in compliance with the laws of Counterparty’s jurisdiction of organization and (E) such election, and settlement in accordance therewith, does not and will not violate or conflict with any law or regulation applicable to Counterparty, or any order or judgment of any court or other agency of government applicable to it or any of its assets, and any governmental consents that are required to have been obtained by Counterparty with respect to such election or settlement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(iii) Notwithstanding any election to the contrary in any Settlement Notice, Physical Settlement shall be applicable for any Settlement of any Transaction:

- (A) to all of the Settlement Shares designated in such Settlement Notice if, at any time from the date such Settlement Notice is received by Dealer until the related First Unwind Date, inclusive, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold

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Price or (II) Dealer determines, in its good faith and commercially reasonable judgment, that it would, after using commercially reasonable efforts, be unable to purchase a number of Shares in the market sufficient to unwind a commercially reasonable hedge position in respect of the portion of the Transaction represented by such Settlement Shares and satisfy its delivery obligation hereunder, if any, by the Maturity Date (x) in a manner that (A) would, if Dealer were Counterparty or an affiliated purchaser of Counterparty and taking into account any other Transactions hereunder or any other issuer forward or similar transactions with overlapping unwind periods, be in compliance with the safe harbor provided by Rule 10b-18(b) under the Exchange Act and (B) based on advice of counsel, would not raise material risks under applicable securities laws or (y) due to the lack of sufficient liquidity in the Shares (each, a “**Trading Condition**”); or

- (B) to all or a portion of the Settlement Shares designated in such Settlement Notice if, on any day during the relevant Unwind Period, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and commercially reasonable judgment or based on advice of counsel, as applicable, that a Trading Condition has occurred with respect to such Transaction, in which case the provisions set forth below in the fourth paragraph opposite “Early Valuation” shall apply as if such day were the Early Valuation Date for such Transaction and (x) for purposes of clause (i) of such paragraph, such day shall be the last Unwind Date of such Unwind Period and the “Unwound Shares” shall be calculated to, and including, such day and (y) for purposes of clause (ii) of such paragraph, the “Remaining Shares” shall be equal to the number of Settlement Shares designated in such Settlement Notice *minus* the Unwound Shares determined in accordance with clause (x) of this sentence.

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Threshold Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be 50% of the Initial Forward Price for such Transaction.
Electing Party:	Counterparty
Settlement Method Election Date:	With respect to any Settlement of any Transaction, (x) the second Scheduled Trading Day immediately preceding the Valuation Date for such Transaction, in the case of Physical Settlement, or (y) the fifth Scheduled Trading Day immediately preceding the First Unwind Date for such Transaction, in the case of Cash Settlement or Net Share Settlement.
Default Settlement Method:	Physical Settlement
Physical Settlement:	Notwithstanding Section 9.2(a)(i) of the Equity Definitions, on the Settlement Date for any Physical Settlement of any Transaction, Dealer shall pay to Counterparty an amount in USD equal to the Forward Price for such Transaction on the relevant Valuation Date <i>multiplied by</i> the number of Settlement Shares for such Settlement, and Counterparty shall deliver to Dealer such Settlement Shares. If, on any Settlement Date, the Settlement Shares to be delivered by Counterparty to Dealer hereunder are not so delivered (the “ <b>Deferred Shares</b> ”), and a Forward Price Reduction Date occurs during the period from, and including, such Settlement Date to, but excluding, the date such Settlement Shares are actually delivered to Dealer, then the portion of the 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.
Settlement Date:	For any Settlement of any Transaction to which Physical Settlement is applicable, the Valuation Date for such Settlement.

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Net Share Settlement:	On the Net Share Settlement Date for any Settlement of any Transaction to which Net Share Settlement is applicable, if the Net Share Settlement Amount for such Settlement is greater than zero, Counterparty shall deliver a number of Shares equal to such Net Share Settlement Amount (rounded down to the nearest integer) to Dealer, and if such Net Share Settlement Amount is less than zero, Dealer shall deliver a number of Shares equal to the absolute value of such Net Share Settlement Amount (rounded down to the nearest integer) to Counterparty, in either case, in accordance with Section 9.4 of the Equity Definitions, with such Net Share Settlement Date deemed to be a “Settlement Date” for purposes of such Section 9.4, and, in either case, plus cash in lieu of any fractional Shares included in such Net Share Settlement Amount but not delivered due to rounding required hereby, valued at the relevant Settlement Price.
Net Share Settlement Date:	For any Settlement of any Transaction to which Net Share Settlement is applicable, the date that follows the Valuation Date for such Settlement by one Settlement Cycle.
Net Share Settlement Amount:	For any Settlement of any Transaction to which Net Share Settlement is applicable, an amount equal to the Forward Cash Settlement Amount for such Settlement <i>divided by</i> the Settlement Price for such Settlement.
Forward Cash Settlement Amount:	Notwithstanding Section 8.5(c) of the Equity Definitions, the Forward Cash Settlement Amount for any Cash Settlement or Net Share Settlement of any Transaction shall be equal to (i) the number of Settlement Shares for such Settlement <i>multiplied by</i> (ii) an amount equal to (A) the Settlement Price for such Settlement <i>minus</i> (B) the Relevant Forward Price for such Settlement.
Relevant Forward Price:	For any Cash Settlement of any Transaction, the arithmetic average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement. For any Net Share Settlement of any Transaction, the weighted average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each such Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent).



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Settlement Price:

For any Cash Settlement of any Transaction, the arithmetic average of the 10b-18 VWAP on each Unwind Date relating to such Settlement, *plus* a commercially reasonable amount determined by the Calculation Agent that in no event will exceed [USD 0.02].

For any Net Share Settlement of any Transaction, the weighted average price of the purchases of Shares made by Dealer (or its agent or affiliate) during the Unwind Period for such Settlement in connection with unwinding its commercially reasonable hedge position relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent), *plus* a commercially reasonable amount determined by the Calculation Agent that in no event will exceed [USD 0.02].

10b-18 VWAP:

For any Exchange Business Day, as determined by the Calculation Agent based on the 10b-18 Volume Weighted Average Price per Share as reported in the composite transactions for United States exchanges and quotation systems for the regular trading session (including any extensions thereof) of the Exchange on such Exchange Business Day (without regard to pre-open or after hours trading outside of such regular trading session for such Exchange Business Day), as published by Bloomberg at 4:15 p.m. New York City time (or 15 minutes following the end of any extension of the regular trading session) on such Exchange Business Day, on Bloomberg page “NI <Equity> AQR\_SEC” (or any successor thereto), or if such price is not so reported on such Exchange Business Day for any reason or is, in the Calculation Agent’s reasonable determination, erroneous, such 10b-18 VWAP shall be as reasonably determined by the Calculation Agent. For purposes of calculating the 10b-18 VWAP for such Exchange Business Day, the Calculation Agent will include only those trades that are reported during the period of time during which Counterparty could purchase its own shares under Rule 10b-18(b)(2) and are effected pursuant to the conditions of Rule 10b-18(b)(3), each under the Exchange Act (such trades, “**Rule 10b-18 eligible transactions**”).

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Unwind Activities:	<p>The times and prices at which Dealer (or its agent or affiliate) purchases any Shares during any Unwind Period in connection with unwinding its commercially reasonable hedge position in respect of each Transaction shall be determined by Dealer in a commercially reasonable manner. Without limiting the generality of the foregoing, in the event that Dealer concludes, in its reasonable discretion based on advice of counsel, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer) (a “<b>Regulatory Disruption</b>”), for it to refrain from purchasing Shares in connection with unwinding its commercially reasonable hedge position in respect of such Transaction on any Scheduled Trading Day that would have been an Unwind Date but for the occurrence of a Regulatory Disruption, Dealer may (but shall not be required to) notify Counterparty in writing that a Regulatory Disruption has occurred on such Scheduled Trading Day with respect to such Transaction, in which case Dealer shall, to the extent practicable in its good faith discretion, specify the nature of such Regulatory Disruption, and, for the avoidance of doubt, such Scheduled Trading Day shall not be an Unwind Date for such Transaction and such Regulatory Disruption shall be deemed to be a Market Disruption Event; <i>provided</i> that Dealer may exercise its right to suspend under this sentence only in good faith in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.</p>
Relevant Settlement Date:	<p>For any Settlement of any Transaction, the Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date for such Settlement, as the case may be.</p>
Other Applicable Provisions:	<p>To the extent Dealer is obligated to deliver Shares under any Transaction, the provisions of Sections 9.2 (last sentence only), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to such Transaction; <i>provided</i> that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.</p>

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**Share Adjustments:**

Potential Adjustment Events:	An Extraordinary Dividend shall not constitute a Potential Adjustment Event. For the avoidance of doubt, a cash dividend on the Shares that differs from expected dividends as of the first Trading Day of the Forward Hedge Selling Period for such Transaction shall not be a Potential Adjustment Event under Section 11.2(e)(vii) of the Equity Definitions with respect to such Transaction.
Extraordinary Dividend:	For any Transaction, any dividend or distribution on the Shares with an ex-dividend date occurring on any day following the first Trading Day of the Forward Hedge Selling Period for such Transaction (other than (i) any dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions or (ii) a regular, quarterly cash dividend in an amount equal to or less than the Regular Dividend Amount for such calendar quarter for such Transaction that has an ex-dividend date no earlier than the Forward Price Reduction Date occurring in the relevant quarter for such Transaction).
Regular Dividend Amount:	For each Transaction and each calendar quarter, the amount set forth under the heading “Regular Dividend Amount” in the Supplemental Confirmation for such Transaction and such calendar quarter, as specified in Schedule I to the Supplemental Confirmation for such Transaction.
Method of Adjustment:	Calculation Agent Adjustment.

**Extraordinary Events:**

Extraordinary Events:	The consequences that would otherwise apply under Article 12 of the Equity Definitions to any applicable Extraordinary Event (excluding any Change in Law, Failure to Deliver, Hedging Disruption, Increased Cost of Hedging, Increased Cost of Stock Borrow, Loss of Stock Borrow or any Extraordinary Event that also constitutes a Bankruptcy Termination Event, but including, for the avoidance of doubt, any other applicable Additional Disruption Event) shall not apply.
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Tender Offer: Applicable; *provided* that Section 12.1(d) of the Equity Definitions shall be amended by replacing the reference therein to “10%” with a reference to “20%”.

Delisting: In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall 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); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

**Additional Disruption Events:**

Change in Law: Applicable; *provided* that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (ii) the promulgation of or any change in or public announcement 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 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by adding the words “(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)” after the word “regulation” in the second line thereof and (ii) by replacing the words “the interpretation” with the words “or public announcement of any formal or informal interpretation” in the third line thereof and (C) the words “, unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction” are added immediately following the word “Transaction” in the fifth line thereof; and *provided further* that Section 12.9(a)(ii) of the Equity Definitions is

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hereby amended by adding the phrase “and/or Hedge Position” after the word “Shares” in clause (X) thereof and (iii) by immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date”.

Failure to Deliver:	Applicable with respect to a Transaction if Dealer is required to deliver Shares under such Transaction; otherwise, Not Applicable.
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable; <i>provided</i> that Section 12.9(b)(vi) of the Equity Definitions shall be amended by (i) adding “or” before clause (B) of the second sentence thereof, (ii) deleting clause (C) of the second sentence thereof and (iii) deleting the third and fourth sentences thereof.
Increased Cost of Stock Borrow:	Applicable; <i>provided</i> that Section 12.9(b)(v) of the Equity Definitions shall be amended by (i) adding “or” before clause (B) of the second sentence thereof, (ii) deleting clause (C) of the second sentence thereof and (iii) deleting the third, fourth and fifth sentences thereof. For the avoidance of doubt, upon the announcement of any event that, if consummated, would result in a Merger Event or Tender Offer, the term “rate to borrow Shares” as used in Section 12.9(a)(viii) of the Equity Definitions shall include any commercially reasonable cost borne or amount payable by the Hedging Party in respect of maintaining or reestablishing its hedge position with respect to the relevant Transaction, including, but not limited to, any assessment or other amount payable by the Hedging Party to a lender of Shares in respect of any merger or tender offer premium, as applicable.
Initial Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Loss of Stock Borrow:	Applicable; <i>provided</i> that Section 12.9(b)(iv) of the Equity Definitions shall be amended by (i) deleting clause (A) of the first sentence thereof in its entirety and (ii) replacing the words “neither the Non-Hedging Party nor the Lending Party lends” with “the Lending Party does not lend” in the second sentence thereof.
Maximum Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.

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Hedging Party: For all applicable Additional Disruption Events, Dealer

Determining Party: For all applicable Extraordinary Events, Dealer

**Early Valuation:**

Early Valuation:

For any Transaction, notwithstanding anything to the contrary herein, in the Agreement, in any Supplemental Confirmation or in the Equity Definitions, at any time (x) following the occurrence of a Hedging Event with respect to such Transaction, the declaration by Issuer of an Extraordinary Dividend, or an ISDA Event with respect to such Transaction or (y) if an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position exists, Dealer (or, in the case of such an ISDA Event that is an Event of Default or Termination Event, the party entitled to designate an Early Termination Date in respect of such event pursuant to Section 6 of the Agreement) shall have the right to designate any Scheduled Trading Day to be the “Early Valuation Date” for such Transaction, in which case the provisions set forth in this “Early Valuation” Section shall apply to such Transaction, in the case of an Event of Default or Termination Event, in lieu of Section 6 of the Agreement. For the avoidance of doubt, any amount calculated pursuant to this “Early Valuation” Section as a result of an Extraordinary Dividend shall not be adjusted by the value associated with such Extraordinary Dividend.

Dealer covenants and agrees with Counterparty that Dealer will not knowingly cause the occurrence of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position on any day during the term of any Transaction for the purpose, in whole or in part, of causing the occurrence of an Early Valuation Date.

If an Early Valuation Date for a Transaction occurs on a date that is not during an Unwind Period for such Transaction, then such Early Valuation Date shall be a Valuation Date for a Physical Settlement of such Transaction, and the number of Settlement Shares for such Settlement shall be the Number of Shares on such Early Valuation Date; *provided* that Dealer may in its sole

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discretion permit Counterparty to elect Cash Settlement or Net Share Settlement in respect of such Transaction. Notwithstanding anything to the contrary in this Master Confirmation, any Supplemental Confirmation, the Agreement or the Equity Definitions, if Dealer designates an Early Valuation Date with respect to a Transaction following the occurrence of an ISDA Event and such Early Valuation Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction, then, for purposes of such Early Valuation Date, (i) a Supplemental Confirmation relating to such Transaction shall, notwithstanding the provisions under Section 3 of this Master Confirmation, be deemed to be effective; and (ii) the Forward Price shall be deemed to be the Initial Forward Price (calculated assuming that the last Trading Day of such Forward Hedge Selling Period were the day immediately following the date Dealer so notifies Counterparty of such designation of an Early Valuation Date for purposes of such Early Valuation Date).

If an Early Valuation Date for a Transaction occurs during an Unwind Period for such Transaction, then (i) (A) the last Unwind Date of such Unwind Period shall be deemed to be such Early Valuation Date, (B) a Settlement shall occur in respect of such Unwind Period, and the Settlement Method elected by Counterparty in respect of such Settlement shall apply, and (C) the number of Settlement Shares for such Settlement shall be the number of Unwound Shares for such Unwind Period on such Early Valuation Date, and (ii) (A) such Early Valuation Date shall be a Valuation Date for an additional Physical Settlement of such Transaction (*provided* that Dealer may in its sole discretion elect that the Settlement Method elected by Counterparty for the Settlement described in clause (i) of this sentence shall apply) and (B) the number of Settlement Shares for such additional Settlement shall be the number of Remaining Shares on such Early Valuation Date.

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.

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ISDA Event:	(i) Any Event of Default or Termination Event, other than an Event of Default or Termination Event that also constitutes a Bankruptcy Termination Event, that gives rise to the right of either party to designate an Early Termination Date pursuant to Section 6 of the Agreement or (ii) the announcement of any event or transaction on or after the first Trading Day of the Forward Hedge Selling Period for such Transaction that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Delisting or Change in Law, in each case, as determined by the Calculation Agent.
Amendment to Merger Event:	Section 12.1(b) of the Equity Definitions is hereby amended by deleting the remainder of such Section beginning with the words “in each case if the Merger Date is on or before” in the fourth to last line thereof.
Hedging Event:	In respect of any Transaction, the occurrence of any of the following events on or following the first Trading Day of the Forward Hedge Selling Period: (i) (x) a Loss of Stock Borrow in connection with which Counterparty does not refer the Hedging Party to a satisfactory Lending Party within the required time period as provided in Section 12.9(b)(iv) of the Equity Definitions or (y) a Hedging Disruption, (ii) (A) an Increased Cost of Stock Borrow or (B) an Increased Cost of Hedging in connection with which, in the case of sub-clause (A) or (B), Counterparty does not elect, and so notify the Hedging Party of its election, in each case, within the required time period to either amend such Transaction pursuant to Section 12.9(b)(v)(A) or Section 12.9(b)(vi)(A) of the Equity Definitions, as applicable, or pay an amount determined by the Calculation Agent that corresponds to the relevant Price Adjustment pursuant to Section 12.9(b)(v)(B) or Section 12.9(b)(vi)(B) of the Equity Definitions, as applicable, or (iii) the occurrence of a Market Disruption Event during an Unwind Period for such Transaction and the continuance of such Market Disruption Event for at least eight Scheduled Trading Days. In respect of any Transaction, if a Hedging Event occurs with respect to such Transaction on or after the first Trading Day of the Forward Hedge Selling Period for such Transaction and prior to the Trade Date for such Transaction, the Calculation Agent may reduce the Initial Forward Price to account for such Hedging Event and any costs or expenses reasonably incurred by Dealer as a result of such Hedging Event.



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Remaining Shares: For any Transaction, on any day, the Number of Shares for such Transaction as of such day (or, if such day occurs during an Unwind Period for such Transaction, the Number of Shares for such Transaction as of such day *minus* the Unwound Shares for such Transaction for such Unwind Period on such day).

Unwound Shares: For any Transaction, for any Unwind Period in respect of such Transaction on any day, the aggregate number of Shares with respect to which Dealer has unwound its commercially reasonable hedge position in respect of such Transaction in connection with the related Settlement as of such day.

**Acknowledgements:**

Non-Reliance: Applicable

Agreements and Acknowledgements Regarding Hedging Activities: Applicable

Additional Acknowledgements: Applicable

Calculation Agent: Dealer; *provided* that, following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to select a leading dealer in the market for U.S. corporate equity derivatives [reasonably acceptable to Dealer] to replace Dealer as the Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. Following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent will, within a commercially reasonable period of time following such request, provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such written 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, as the case may be; *provided* that Dealer shall not be required to disclose any proprietary or confidential models of Dealer or any information that is proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.

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**Payments and Deliveries:**

Counterparty Payment and Delivery Instructions:	To be provided by Counterparty
Dealer Payment and Delivery Instructions:	To be provided by Dealer

**Contact Details:**

Counterparty's Contact Details for Purpose of Giving Notice:	To be provided by Counterparty
Dealer's Contact Details for Purpose of Giving Notice:	To be provided by Dealer
Dealer's Contact Details for Trade Affirmations and Settlements:	To be provided by Dealer
Dealer's Contact Details for Trade Confirmations:	To be provided by Dealer

**Offices:**

Office of Counterparty:	Not Applicable; Counterparty is not a Multibranch Party.
Office of Dealer:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.

3. **Effectiveness.**

The effectiveness of each Supplemental Confirmation and the related Transaction on the Effective Date for such Supplemental Confirmation shall be subject to the following conditions except to the extent previously waived by Dealer in writing:

(a) the representations and warranties of Counterparty contained in the Equity Distribution Agreement, and any certificate delivered pursuant thereto by Counterparty shall be true and correct on such Effective Date as if made as of such Effective Date;

(b) Counterparty shall have performed all of the obligations required to be performed by it under the Equity Distribution Agreement on or prior to such Effective Date;

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(c) all of the conditions set forth in Section 5 of the Equity Distribution Agreement shall have been satisfied;

(d) such Supplemental Confirmation shall be dated during the period commencing on the date of the Equity Distribution Agreement and expiring on the earlier to occur of (i) the date on which the gross sale price of Shares sold pursuant to the Equity Distribution Agreement and any similar agreement or agreements with one or more other dealers and dated the date thereof is equal to or exceeds USD 750 million and (ii) the date on which the Equity Distribution Agreement is terminated;

(e) all of the representations and warranties of Counterparty hereunder and under the Agreement shall be true and correct on such Effective Date as if made as of such Effective Date; and

(f) Counterparty shall have performed all of the obligations required to be performed by it hereunder and under the Agreement on or prior to such Effective Date, including without limitation its obligations under Section 5 and Section 6 of this Master Confirmation.

(g) Counterparty shall have delivered to Dealer an opinion of counsel in form and substance reasonably satisfactory to Dealer, with respect to the matters set forth in Section 3(a) of the Agreement and that the maximum number of Shares initially issuable under such Transaction have been duly authorized and, upon issuance pursuant to the terms of such Transaction, will be validly issued, fully paid and nonassessable.

Notwithstanding the foregoing or any other provision of this Master Confirmation or any Supplemental Confirmation, if in respect of any Transaction on or prior to 9:00 a.m., New York City time, on any Forward Hedge Settlement Date, in connection with establishing its commercially reasonable hedge position in respect of such Transaction Dealer, in its sole judgment, it (or its affiliate) (x) is unable, after using commercially reasonable efforts, to borrow and deliver for sale the full number of Shares to be borrowed and sold pursuant to the Equity Distribution Agreement on such Forward Hedge Settlement Date or (y) would incur a stock loan cost of more than a rate equal to the Maximum Stock Loan Rate for such Transaction with respect to all or any portion of such full number of Shares, then the effectiveness of the related Supplemental Confirmation and such Transaction shall be limited to the number of Shares Dealer is so able to borrow in connection with establishing its commercially reasonable hedge position of such Transaction at a cost of not more than a rate equal to the Maximum Stock Loan Rate for such Transaction, which, for the avoidance of doubt, may be zero. “**Forward Hedge Settlement Date**” will mean a Trading Day that is one Settlement Cycle immediately following the Trading Day on which the sale of any Forward Hedge Shares occurs pursuant to the Equity Distribution Agreement.

4. Additional Mutual Representations and Warranties. In addition to the representations and warranties in the Agreement, each party represents and warrants to the other party that it is an “eligible contract participant”, as defined in the U.S. Commodity Exchange Act (as amended), and an “accredited investor” as defined in Section 2(a)(15)(ii) of the Securities Act of 1933 (as amended) (the “**Securities Act**”), and is entering into each Transaction hereunder as principal and not for the benefit of any third party.

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5. Additional Representations, Warranties and Agreements of Counterparty. Counterparty represents and warrants to Dealer that the representations and warranties of Counterparty which are set forth in Section 1 of the Equity Distribution Agreement are true and correct as of the date hereof and, except to the extent previously waived by Dealer in writing, will be deemed to have represented and warranted to Dealer that such representations and warranties are true and correct as of the date of each Supplemental Confirmation, each Trade Date for any Transaction and each Forward Hedge Settlement Date for any Transaction. Such representations and warranties hereby are deemed to be repeated to Dealer on the date hereof and on each such other date as if set forth herein. In addition to the representations and warranties in Section 1 of the Equity Distribution Agreement, the Agreement and those contained elsewhere herein, Counterparty represents and warrants to Dealer, and agrees with Dealer, that:

(a) without limiting the generality of Section 13.1 of the Equity Definitions, it acknowledges that Dealer is not making any representations or warranties with respect to the treatment of any Transaction, including without limitation ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, ASC Topic 480, *Distinguishing Liabilities from Equity*, ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements) or under the Financial Accounting Standards Board's Liabilities & Equity Project;

(b) it shall not take any action to reduce or decrease the number of authorized and unissued Shares below the sum of (i) the aggregate Number of Shares across all Transactions hereunder *plus* (ii) the total number of Shares issuable upon settlement (whether by physical settlement, net share settlement or otherwise) of any other transaction or agreement to which it is a party;

(c) it will not repurchase any Shares if, immediately following such repurchase, the aggregate Number of Shares across all Transactions hereunder would be equal to or greater than [4.5%] [8.5%] of the number of then-outstanding Shares and it will notify Dealer promptly upon the announcement or consummation of any repurchase of Shares in an amount that, taken together with the amount of all repurchases since the date of the last such notice (or, if no such notice has been given, since the Trade Date), exceeds 0.5% of the number of then-outstanding Shares;

(d) it is not entering into this Master Confirmation or any Supplemental Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares), or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) for the purpose of inducing the purchase or sale of the Shares (or any security convertible into or exchangeable for Shares) by others;

(e) it is not aware of any material non-public information regarding itself or the Shares; it is entering into this Master Confirmation and each Supplemental Confirmation and will provide any Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 or any other provision of the federal securities laws; it has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting any Transaction; and it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and each Supplemental Confirmation under Rule 10b5-1 under the Exchange Act ("**Rule 10b5-1**");

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(f) as of the date hereof and the Trade Date for each Transaction no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares; *provided* that Counterparty makes no such representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer;

(g) as of the date hereof, the Trade Date for each Transaction and the date of any payment or delivery by Counterparty or Dealer under any Transaction, it is not and will not be “insolvent” (as such term is defined under Section 101(32) of the Bankruptcy Code);

(h) it is not as of the date hereof, and on the Trade Date for each Transaction and after giving effect to the transactions contemplated hereby and by each Supplemental Confirmation will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended;

(i) as of the date hereof and the Trade Date for each Transaction it: (i) is an “institutional account” as defined in FINRA Rule 4512(c); and (ii) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and will exercise independent judgment in evaluating any recommendations of Dealer or its associated persons; and

(j) IT UNDERSTANDS AS OF THE DATE HEREOF AND AS OF THE TRADE DATE FOR EACH TRANSACTION THAT EACH TRANSACTION IS SUBJECT TO COMPLEX RISKS WHICH MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS.

#### 6. Additional Covenants of Counterparty.

(a) Counterparty acknowledges and agrees that any Shares delivered by Counterparty to Dealer on any Settlement Date or Net Share Settlement Date for any Transaction will be (i) newly issued, (ii) approved for listing or quotation on the Exchange, subject to official notice of issuance, and (iii) registered under the Exchange Act, and, when delivered by Dealer (or an affiliate of Dealer) to securities lenders from whom Dealer (or an affiliate of Dealer) borrowed Shares in connection with hedging its exposure to such Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether any such stock loan is effected by Dealer or an affiliate of Dealer (provided that such Shares may be subject to resale restrictions if the status of any such securities lender would cause any such resale restrictions to apply by virtue of its share ownership in Counterparty, status as an “affiliate” of Counterparty or otherwise). Accordingly, Counterparty agrees that any Shares so delivered will not bear a restrictive legend and will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System. In addition, Counterparty represents and agrees that any such Shares shall be, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance.

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(b) Counterparty agrees that Counterparty shall not enter into or alter any hedging transaction relating to the Shares corresponding to or offsetting any Transaction. Without limiting the generality of the provisions set forth opposite the caption “Unwind Activities” in Section 2 of this Master Confirmation, Counterparty acknowledges that it has no right to, and agrees that it will not seek to, control or influence Dealer’s decision to make any “purchases or sales” (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) under or in connection with any Transaction, including, without limitation, Dealer’s decision to enter into any hedging transactions.

(c) Counterparty acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a “plan” as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Counterparty or any officer, director, manager or similar person of Counterparty is aware of any material non-public information regarding Counterparty or the Shares.

(d) Counterparty shall promptly provide notice thereof to Dealer (i) upon the occurrence of any event that would constitute an Event of Default or a Termination Event in respect of which Counterparty is a Defaulting Party or an Affected Party, as the case may be, and (ii) upon announcement of any event that, if consummated, would constitute an Extraordinary Event or Potential Adjustment Event.

(e) Neither Counterparty nor any of its “affiliated purchasers” (as defined by Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall take any action that would 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 or any corresponding settlement of any other issuer forward sale or similar transaction with Dealer not to meet the requirements of the safe harbor provided by Rule 10b-18 if such purchases were made by Counterparty. Without limiting the generality of the foregoing, during any Unwind Period for any Transaction, except with the prior written consent of Dealer, Counterparty will not, and will cause its affiliated purchasers (as defined in Rule 10b-18) not to, directly or indirectly (including by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or announce or commence any tender offer relating to, any Shares (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for the Shares. However, the foregoing shall not (i) limit Counterparty’s ability, pursuant to any issuer “plan” (as defined in Rule 10b-18), to re-acquire Shares from employees in connection with such plan or program, (ii) limit Counterparty’s ability to withhold Shares to cover tax liabilities associated with such a plan, (iii) prohibit any purchases effected by or for an issuer “plan” by an “agent independent of the issuer”

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(each as defined in Rule 10b-18), (iv) otherwise restrict Counterparty's or any of its affiliates' ability to repurchase Shares under privately negotiated, off-exchange transactions with any of its employees, officers, directors, affiliates or any third party that are not expected to result in market transactions or (v) limit Counterparty's ability to grant stock and options to "affiliated purchasers" (as defined in Rule 10b-18) or the ability of such affiliated purchasers to acquire such stock or options in connection with any issuer "plan" (as defined in Rule 10b-18) for directors, officers and employees or any agreements with respect to any such plan for directors, officers or employees of any entities that are acquisition targets of Counterparty, and in connection with any such purchase under (i) through (v) above, Counterparty will be deemed to represent to Dealer that such purchase does not constitute a "Rule 10b-18 purchase" (as defined in Rule 10b-18).

(f) Counterparty will not be subject to any "restricted period" (as such term is defined in Regulation M promulgated under the Exchange Act ("**Regulation M**")) in respect of Shares or any security with respect to which the Shares are a "reference security" (as such term is defined in Regulation M) during any Unwind Period for any Transaction.

(g) Counterparty shall: (i) prior to the opening of trading in the Shares on any day on which Counterparty makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction during any Unwind Period, notify Dealer of such public announcement; (ii) promptly notify Dealer following any such announcement that such announcement has been made; (iii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (A) Counterparty's average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date for the Merger Transaction that were not effected through Dealer or its affiliates and (B) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding such announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. 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. Counterparty acknowledges that any such notice may result in a Regulatory Disruption, a Trading Condition or, if such notice relates to an event that is also an ISDA Event, an Early Valuation, or may affect the length of any ongoing Unwind Period; accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 6(c) of this Master Confirmation. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act. For the avoidance of doubt, a Merger Transaction or the announcement thereof shall not give either party the right to designate an Early Valuation Date for any Transaction and/or to accelerate or preclude an election by Counterparty of Physical Settlement for any Settlement of any Transaction, unless such Merger Transaction or the announcement thereof is also an ISDA Event.

7. Termination on Bankruptcy. The parties hereto agree that, notwithstanding anything to the contrary in the Agreement or the Equity Definitions, each Transaction constitutes a contract to issue a security of Counterparty as contemplated by Section 365(c)(2) of the Bankruptcy Code and that a Transaction and the obligations and rights of Counterparty and Dealer (except for any

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liability as a result of breach of any of the representations or warranties provided by Counterparty in Section 4 or Section 5 of this Master Confirmation) shall immediately terminate, without the necessity of any notice, payment (whether directly, by netting or otherwise) or other action by Counterparty or Dealer, if, on or prior to the final Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date, as the case may be, for such Transaction an Insolvency Filing occurs or any other proceeding commences with respect to Counterparty under the Bankruptcy Code (a “**Bankruptcy Termination Event**”).

8. Additional Provisions.

(a) Dealer acknowledges and agrees that Counterparty’s obligations under the Transactions are not secured by any collateral and that neither this Master Confirmation nor any Supplemental Confirmation is intended to convey to Dealer rights with respect to the transactions contemplated hereby and by any Supplemental Confirmation that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or 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 this Master Confirmation, any Supplemental Confirmation or the Agreement; *provided further* that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transaction other than the Transactions.

(b) *[Reserved]*

(c) The parties hereto intend for:

(i) each Transaction to be a “securities contract” as defined in Section 741(7) of the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 555 and 561 of the Bankruptcy Code;

(ii) the rights given to Dealer pursuant to “Early Valuation” in Section 2 of this Master Confirmation to constitute “contractual rights” to cause the liquidation of a “securities contract” and to set off mutual debts and claims in connection with a “securities contract”, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code;

(iii) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the Transactions to constitute “margin payments” and “transfers” under a “securities contract” as defined in the Bankruptcy Code;

(iv) all payments for, under or in connection with the Transactions, all payments for Shares and the transfer of Shares to constitute “settlement payments” and “transfers” under a “securities contract” as defined in the Bankruptcy Code; and

(v) any or all obligations that either party has with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement to constitute property held by or due from such party to margin, guaranty or settle obligations of the other party with respect to the transactions under the Agreement (including the Transactions) or any other agreement between such parties.



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(d) Notwithstanding any other provision of the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event will Counterparty be required to deliver in the aggregate in respect of all Settlement Dates, Net Share Settlement Dates or other dates on which Shares are delivered in respect of any amount owed under any Transaction a number of Shares greater than two times the Number of Shares for such Transaction as of the Trade Date for such Transaction (the “**Capped Number**”). The Capped Number shall be subject to adjustment only on account of (x) Potential Adjustment Events of the type specified in (1) Sections 11.2(e)(i) through (vi) of the Equity Definitions or (2) Section 11.2(e)(vii) of the Equity Definitions so long as, in the case of this sub-clause (2), such event is within Issuer’s control, and (y) Merger Events requiring corporate action of Issuer (or any surviving entity of the Issuer hereunder in connection with any such Merger Event). Counterparty represents and warrants to Dealer (which representation and warranty shall be deemed to be repeated for all Transactions on each day that any Transaction is outstanding) that the aggregate Capped Number across all Transactions hereunder is equal to or less than the number of authorized but unissued Shares that are not reserved for future issuance in connection with transactions in the Shares (other than the Transactions) on the date of the determination of such aggregated Capped Number. In the event Counterparty shall not have delivered the full number of Shares otherwise deliverable under any Transaction as a result of this Section 8(d) (the resulting deficit for such Transaction, the “**Deficit Shares**”), Counterparty shall be continually obligated to deliver Shares, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, on a pro rata basis across all Transactions hereunder, when, and to the extent that, (A) Shares are repurchased, acquired or otherwise received by Counterparty or any of its subsidiaries after the date hereof (whether or not in exchange for cash, fair value or any other consideration), (B) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved or (C) Counterparty additionally authorizes any unissued Shares that are not reserved for transactions other than the Transactions (such events as set forth in clauses (A), (B) and (C) above, collectively, the “**Share Issuance Events**”). Counterparty shall promptly notify Dealer of the occurrence of any of the Share Issuance Events (including the number of Shares subject to clause (A), (B) or (C) and the corresponding number of Shares to be delivered for each Transaction) and, as promptly as reasonably practicable, deliver such Shares thereafter. Counterparty shall not, until Counterparty’s obligations under the Transactions have been satisfied in full, use any Shares that become available for potential delivery to Dealer as a result of any Share Issuance Event for the settlement or satisfaction of any transaction or obligation other than the Transactions or reserve any such Shares for future issuance for any purpose other than to satisfy Counterparty’s obligations to Dealer under the Transactions.

(e) The parties intend for this Master Confirmation and each Supplemental Confirmation to constitute a “Contract” as described in the letter dated October 6, 2003 submitted on behalf of Goldman, Sachs & Co. to Paula Dubberly of the staff of the Securities and Exchange Commission (the “**Staff**”) to which the Staff responded in an interpretive letter dated October 9, 2003.

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(f) The parties intend for each Transaction (taking into account purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction) to comply with the requirements of Rule 10b5-1(c)(1)(i)(A) under the Exchange Act and for this Master Confirmation and each Supplemental Confirmation to constitute a binding contract or instruction satisfying the requirements of 10b5-1(c) and to be interpreted to comply with the requirements of Rule 10b5-1(c).

(g) Notwithstanding any provisions of the Agreement, all communications relating to the Transactions or the Agreement shall be transmitted to Dealer exclusively in accordance with its contact details for purposes of giving notice in Section 2 of this Master Confirmation.

(h) Counterparty acknowledges that:

(i) during the term of the Transactions, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to the Transactions;

(ii) Dealer and its affiliates may also be active in the market for the Shares and derivatives linked to the Shares other than in connection with hedging activities in relation to the Transactions, including acting as agent or as principal and for its own account or on behalf of customers;

(iii) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty's securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price and the Settlement Price for each Transaction;

(iv) any market activities of Dealer and its affiliates with respect to the Shares may affect the market price and volatility of the Shares, as well as the Forward Price and the Settlement Price for each Transaction, each in a manner that may be adverse to Counterparty; and

(v) each Transaction is a derivatives transaction; Dealer may purchase or sell shares for its own account at an average price that may be greater than, or less than, the price received by Counterparty under the terms of the relevant Transaction.

(i) Counterparty and Dealer agree and acknowledge that (A) the Transactions contemplated by this Master Confirmation will be entered into in reliance on the fact that this Master Confirmation and each Supplemental Confirmation hereto form a single agreement between Counterparty and Dealer, and Dealer would not otherwise enter into such Transactions; (B) this Master Confirmation, together with each Supplemental Confirmation hereto, is a "qualified financial contract," as such term is defined in Section 5-701(b)(2) of the General Obligations Law; (C) each Supplemental Confirmation hereto, regardless of whether transmitted electronically or otherwise, constitutes a "confirmation in writing sufficient to indicate that a contract has been made between the parties" hereto, as set forth in Section 5-701(b)(3)(b) of the General Obligations Law; and (D) this Master Confirmation and each Supplemental Confirmation hereto constitute a prior "written contract," as set forth in Section 5-701(b)(1)(b) of the General Obligations Law, and each party hereto intends and agrees to be bound by this Master Confirmation and such Supplemental Confirmation.

(j) Counterparty and Dealer agree that, notwithstanding anything to the contrary herein, upon the execution and delivery of any Supplemental Confirmation relating to a Transaction by Counterparty, each of the representations, warranties, covenants, agreements and other provisions of this Master Confirmation and the Supplemental Confirmation for such Transaction (including, without limitation, Dealer's right to designate an Early Valuation Date in respect of such Transaction pursuant to the provisions opposite the caption "Early Valuation" in Section 2 of this Master Confirmation and the termination of such Transaction following a Bankruptcy Termination Event as described in Section 7 of this Master Confirmation) shall govern, and be applicable to, such Transaction as of the first Trading Day of the Forward Hedge Selling Period for such Transaction as if the Trade Date for such Transaction were such first Trading Day.

(k) 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) to be made by it to the other party under the Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) 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 (iii) 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 (ii) 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) Change of Account. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word "delivery" in the first line thereof: "to another account in the same legal and tax jurisdiction".

(iii) "Tax" as used in this clause (k) and "Indemnifiable Tax" as defined in Section 14 of the Agreement shall not include (A) any 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 (a "FATCA Withholding Tax") and (B) any tax imposed or collected pursuant to Section 871(m) of the Code or any current or future regulations or official interpretation thereof (a "Section 871(m) Withholding Tax"). For the avoidance of doubt, each of a FATCA Withholding Tax and a Section 871(m) Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for purposes of Section 2(d) of the Agreement.

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9. Indemnification. Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, and controlling persons (Dealer and each such person being an “**Indemnified Party**”) from and against any and all losses (excluding, for the avoidance of doubt, financial losses resulting from the economic terms of the Transactions), claims, damages and liabilities (or actions in respect thereof), joint or several, incurred by or asserted against such Indemnified Party which arise out of, are in connection with, or relate to any breach of any covenant or representation made by Counterparty in this Master Confirmation and any Supplemental Confirmation. In addition, Counterparty will reimburse any Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim covered by this Section 9 or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. Counterparty will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer’s breach of any covenant or representation, willful misconduct, gross negligence or bad faith in performing the services that are subject of the Transactions. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. Counterparty also agrees that no Indemnified Party shall have any liability to Counterparty or any person asserting claims on behalf of or in right of Counterparty in connection with or as a result of any matter referred to in this Master Confirmation and any Supplemental Confirmation except to the extent that any losses, claims, damages, liabilities or expenses incurred by Counterparty result from the gross negligence, willful misconduct or bad faith of the Indemnified Party. The provisions of this Section 9 shall survive the completion of the Transactions contemplated by this Master Confirmation and any Supplemental Confirmation and any assignment and/or delegation of the Transactions made pursuant to the Agreement, this Master Confirmation or any Supplemental Confirmation shall inure to the benefit of any permitted assignee of Dealer. For the avoidance of doubt, any payments due as a result of this provision may not be used to set off any obligation of Dealer upon settlement of the Transactions.

10. Beneficial Ownership. Notwithstanding anything to the contrary in the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event shall Dealer be entitled to receive, or be deemed to receive, or have the “right to acquire” (within the meaning of NYSE Rule 312.04(g)) Shares to the extent that, upon such receipt of such Shares, (i) the “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder) of Shares by Dealer, any of its affiliates’ business units subject to aggregation with Dealer for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act and all persons who may form a “group” (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer with respect to “beneficial ownership” of any Shares (collectively, “**Dealer Group**”) would be equal to or greater than the lesser of

(x) 4.5% of the outstanding Shares (such condition, an “**Excess Section 13 Ownership Position**”), and (y) 4.9% of the outstanding Shares as of the Trade Date for any Transaction (such number of Shares, the “**Threshold Number of Shares**” and such condition, the “**Excess NYSE Ownership Position**”) or (ii) Dealer, Dealer Group or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a “**Dealer Person**”) under Section 203 of the Delaware General Corporation Law or any state or federal bank holding company or banking laws, or any federal, state or local laws, regulations or regulatory orders (including, without limitation, the Federal Power Act) applicable to ownership of Shares (“**Applicable Laws**”), would own, beneficially own, constructively own, control, hold the power to vote or otherwise meet a relevant definition of ownership in excess of a number of Shares equal to (x) the lesser of (A) the maximum number of Shares that would be permitted under Applicable Laws and (B) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (such condition described in clause (ii), an “**Excess Regulatory Ownership Position**”). Dealer shall notify Counterparty promptly if, at any time, an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position has occurred or would occur as a result of a delivery by Counterparty to Dealer. If any delivery owed to Dealer under any Transaction is not made, in whole or in part, as a result of this provision, (i) 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 Exchange Business Day after, Dealer gives notice to Counterparty that such delivery would not result in (x) Dealer Group directly or indirectly so beneficially owning in excess of the lesser of (A) 4.5% of the outstanding Shares and (B) the Threshold Number of Shares or (y) the occurrence of an Excess Regulatory Ownership Position and (ii) if such delivery relates to a Physical Settlement of any Transaction, notwithstanding anything to the contrary herein, Dealer shall not be obligated to satisfy the portion of its payment obligation with respect to such Transaction corresponding to any Shares required to be so delivered until the date Counterparty makes such delivery.

11. Non-Confidentiality. The parties hereby agree that (i) effective from the date of commencement of discussions concerning the Transactions, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind, including opinions or other tax analyses, provided by Dealer and its affiliates to Counterparty relating to such tax treatment and tax structure; *provided* that the foregoing does not constitute an authorization to disclose the identity of Dealer or its affiliates, agents or advisers, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information, and (ii) Dealer does not assert any claim of proprietary ownership in respect of any description contained herein or therein relating to the use of any entities, plans or arrangements to give rise to a particular U.S. federal income tax treatment for Counterparty.

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12. Restricted Shares. If Counterparty is unable to comply with the covenant of Counterparty contained in the portion of Section 6(a) of this Master Confirmation from and including clause (ii) to and including the penultimate sentence thereof or Dealer otherwise determines in its reasonable opinion that any Shares to be delivered to Dealer by Counterparty under any Transaction may not be freely returned by Dealer to securities lenders as described in the covenant of Counterparty contained in Section 6(a) of this Master Confirmation, then delivery of any such Settlement Shares (the “**Unregistered Settlement Shares**”) shall be effected pursuant to Annex A hereto, unless waived by Dealer.

13. Use of Shares. Dealer acknowledges and agrees that, except in the case of a Private Placement Settlement (as defined in Annex A hereto), Dealer shall use any Shares delivered by Counterparty to Dealer on any Settlement Date to return to securities lenders to close out borrowings created by Dealer in connection with its hedging activities related to exposure under the Transactions or otherwise in compliance with applicable law.

14. Rule 10b-18. In connection with bids and purchases of Shares in connection with any Net Share Settlement or Cash Settlement of any Transaction or any corresponding settlement of any other issuer forward or similar transaction with Dealer, Dealer shall use commercially reasonable 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 under the Exchange Act, as if such provisions were applicable to such purchases and 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.

15. Governing Law. Notwithstanding anything to the contrary in the Agreement, the Agreement, this Master Confirmation, any Supplemental Confirmation, any Pricing Report and all matters arising in connection with the Agreement, this Master Confirmation, any Supplemental Confirmation or any Pricing Report, including any claim, controversy or dispute arising hereunder or thereunder or relating hereto or thereto, shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York (without reference to its choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law).

16. Set-Off. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under any Transaction against any delivery or payment obligations owed to it by the other party, whether arising under the Agreement, under any other agreement between parties hereto, by operation of law or otherwise.

17. Staggered Settlement. Notwithstanding anything to the contrary herein, Dealer may, by prior notice to Counterparty, satisfy its obligation to deliver any Shares or other securities on any date due (an “**Original Delivery Date**”) by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

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

19. Jurisdiction. The parties hereto irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City in connection with any suit, action, proceeding, dispute or other matter relating to the Agreement, this Master Confirmation, any Supplemental Confirmation or any Pricing Report and waive any objection to the laying of venue in, and any claim of inconvenient forum with respect to, these courts.

20. Transfer and Assignment; Designation by Dealer.

(a) Notwithstanding any provision of the Agreement to the contrary, Dealer may assign, transfer and set over all rights, title and interest, powers, privileges and remedies of Dealer under any Transaction, in whole or part, to an affiliate of Dealer without the consent of Counterparty; *provided* that (i) at the time of assignment or transfer, such affiliate or its guarantor, if any, has creditworthiness that is equivalent to or better than that of Dealer, (ii) no Event of Default, Potential Event of Default or Termination Event with respect to which Dealer or such affiliate is the Defaulting Party or an Affected Party, as the case may be, exists or would result therefrom, (iii) no event, circumstance or similar condition giving rise to a right or responsibility to designate an Early Valuation Date or otherwise terminate or cancel the Transaction or to make an adjustment to the terms of the Transaction would result therefrom, and (iv) Counterparty shall not, nor is there a material likelihood that it would, as a result of such assignment or transfer (A) be required to pay to Dealer or such affiliate an additional amount in respect of any Tax, (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax as to which no additional amount is required to be paid, (C) otherwise be subject to materially adverse tax consequences, (D) become subject to the jurisdiction of any state or country other than the United States of America or (E) become subject to any regulatory requirements with respect to clearing or margin for uncleared swaps.

(b) Notwithstanding any other provision in this Master Confirmation or any Supplemental 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 any Transaction, 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.

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21. Counterparts.

(a) This Master Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation by signing and delivering one or more counterparts. 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., 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.

(b) 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 email.

22. Delivery of Cash. For the avoidance of doubt, nothing in this Master Confirmation or any Supplemental Confirmation shall be interpreted as requiring Counterparty to deliver cash or other assets in respect of the settlement of the Transactions, except in circumstances where the required cash or other asset settlement thereof is permitted for classification of the contract as equity by ASC 815-40, *Derivatives and Hedging — Contracts in Entity’s Own Equity*, as in effect on the date hereof.

23. Adjustments. For the avoidance of doubt, whenever the Calculation Agent, the Hedging Party or the Determining Party is called upon to make an adjustment pursuant to the terms of this Master Confirmation, any Supplemental Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent, the Hedging Party or the Determining Party, as applicable, shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position at the time of the event.

24. Other Forward and Similar Dealer Transactions. 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 the 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 Transaction 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



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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.).

25. [No Insurance or Guaranty]. Counterparty understands, agrees and acknowledges that no obligations of Dealer to it hereunder shall be entitled to the benefit of deposit insurance and that such obligations shall not be guaranteed by any affiliate of Dealer or any governmental agency.]

26. [Wall Street Transparency and Accountability Act]. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 (“WSTAA”), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party’s otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Master Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Master Confirmation, the Equity Definitions incorporated herein or the Agreement (including, but not limited to, rights arising from an Increased Cost of Stock Borrow, any condition described in clause (i) of Section 10 of this Master Confirmation, an Excess Regulatory Ownership Position, an Illegality, or other event, circumstance or similar condition giving rise to a right or responsibility to designate an Early Valuation Date or otherwise terminate or cancel the Transaction or to make an adjustment to the terms of the Transaction (as defined in the Agreement)).]

27. [Payee Representations and Tax Documents to be Delivered].

(a) *Dealer*. For the purpose of Section 3(f) of the Agreement, Dealer makes the following representation: [to be provided by Dealer]. For the purpose of Section 4(a)(i) and 4(a)(ii) of the Agreement, Dealer agrees to deliver a completed and accurate U.S. Internal Revenue Service Form [to be provided by Dealer] (or successor form), completed in a manner reasonably acceptable to Counterparty, upon execution and delivery of this Master Confirmation, promptly upon reasonable demand by Counterparty and promptly upon learning that any such form previously delivered by Dealer has become [obsolete] [inaccurate] or incorrect.]

(b) *Counterparty*. For the purpose of Section 3(f) of the Agreement, Counterparty makes the following representation: Counterparty is a corporation established under the laws of the State of Delaware and 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 United States federal income tax purposes. For the purpose of Section 4(a)(i) and 4(a)(ii) of the Agreement, Counterparty agrees to deliver a completed and accurate U.S. Internal Revenue Service Form W-9 (or successor form) [, completed in a manner reasonably acceptable to Dealer,] upon execution and delivery of this Master Confirmation, promptly upon reasonable demand by Dealer and promptly upon learning that any such form previously delivered by Counterparty has become [obsolete] [inaccurate] or incorrect.

(c) For the purpose of Section 4(a)(i) and 4(a)(ii) of the Agreement, each of Dealer and Counterparty agree to deliver any other form or document that may be required by the other party in order to allow such party to make a payment under this Master Confirmation without any deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate. In each case, such form or document shall be completed accurately and in a manner reasonably acceptable to the other party and shall be delivered promptly upon reasonable demand by the other party and promptly upon learning that any such form or document previously delivered by it has become [obsolete] [inaccurate] or incorrect.]

28. EMIR Portfolio Reconciliation and NFC Representation Protocols.

(a) *2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.* The parties agree that the terms of the Attachment to the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on July 19, 2013 (“Protocol”) apply to the Agreement as if the parties had adhered to the Protocol without amendment. In respect of the Attachment to the Protocol, (i) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this clause (a) (and references to “such party’s Adherence Letter” and “its Adherence Letter” shall be read accordingly), (ii) references to “adheres to the Protocol” shall be deemed to be “enters into the Agreement”, (iii) references to “Protocol Covered Agreement” shall be deemed to be references to the Agreement (and each “Protocol Covered Agreement” shall be read accordingly), and (iv) references to “Implementation Date” shall be deemed to be references to the date of this Master Confirmation. For the purposes of this clause (a):

(i) Dealer is a Portfolio Data Sending Entity and Counterparty is a Portfolio Data Receiving Entity.

(ii) Dealer and Counterparty may use a Third Party Service Provider, and each of Dealer and Counterparty consents to such use, including the communication of the relevant data in relation to Dealer and Counterparty to such Third Party Service Provider for the purposes of the reconciliation services provided by such entity.

(iii) The Local Business Days for such purposes in relation to Dealer are [to be provided by Dealer] and, in relation to Counterparty, are [to be provided by Counterparty].

(iv) The provisions in this paragraph shall survive the termination of this Master Confirmation.

(v) The following are the applicable email addresses:

Portfolio Data:

Dealer:

Counterparty:

Notice of discrepancy:

Dealer:

Counterparty:

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Dispute Notice:

Dealer:

Counterparty:

(b) *NFC Representation Protocol*. The parties agree that the provisions set out in the Attachment to the ISDA 2013 EMIR NFC Representation Protocol published by ISDA on March 8, 2013 (the “NFC Representation Protocol”) shall apply to the Agreement as if each party were an Adhering Party under the terms of the NFC Representation Protocol. In respect of the Attachment to the Protocol, (i) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this clause (b) (and references to “the relevant Adherence Letter” and “its Adherence Letter” shall be read accordingly), (ii) references to “adheres to the Protocol” shall be “enters into the Agreement”, (iii) references to “Covered Master Agreement” shall be deemed to be references to the Agreement (and each “Covered Master Agreement” shall be read accordingly), and (iv) references to “Implementation Date” shall be deemed to be references to the date of this Master Confirmation. Counterparty confirms that it enters into this Master Confirmation as a party making the NFC Representation (as such term is defined in the NFC Representation Protocol). Counterparty shall promptly send any required notification under the NFC Representation Protocol to Dealer [(with a copy to [to be provided by Dealer]].

29. Transaction Reporting – Consent for Disclosure of Information.

Notwithstanding anything to the contrary herein or in the Agreement or any non-disclosure, confidentiality or other agreements entered into between the parties from time to time, each party hereby consents to the Disclosure of information (the “**Reporting Consent**”):

- (i) to the extent required by, or necessary in order to comply with, any applicable law, rule or regulation which mandates Disclosure of transaction and similar information or to the extent required by, or necessary in order to comply with, any order, request or directive regarding Disclosure of transaction and similar information issued by any relevant authority or body or agency (“**Reporting Requirements**”); or
- (ii) to and between the other party’s head office, branches or affiliates; to any person, agent, third party or entity who provides services to such other party or its head office, branches or affiliates; to a Market; or to any trade data repository or any systems or services operated by any trade repository or Market, in each case, in connection with such Reporting Requirements.

“**Disclosure**” means disclosure, reporting, retention, or any action similar or analogous to any of the aforementioned.

“**Market**” means any exchange, regulated market, clearing house, central clearing counterparty or multilateral trading facility.

Disclosures made pursuant to this Reporting Consent may include, without limitation, Disclosure of information relating to disputes over transactions between the parties, a party’s identity and certain transaction and pricing data and may result in certain anonymous information becoming available to the public or to recipients in a jurisdiction which may have a different level of protection for personal data from that of the relevant party’s home jurisdiction.

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This Reporting Consent shall be deemed to constitute an agreement between the parties with respect to Disclosure in general and shall survive the termination of this Master Confirmation. No amendment to or termination of this Reporting Consent shall be effective unless such amendment or termination is made in writing between the parties and specifically refers to this Reporting Consent.]

30. [Contractual Recognition of Bail-In (United Kingdom).

(a) Notwithstanding anything to the contrary in the Agreement or in any other agreement, arrangement or understanding among the parties, each party acknowledges and accepts that liabilities arising under the Agreement (other than Excluded Liabilities) may be subject to the exercise of the UK Bail-in Power by the relevant resolution authority and agrees and consents to, and acknowledges and accepts to be bound by, any Bail-in Action and the effects thereof (including any variation, modification and/or amendment to the terms of the Agreement as may be necessary to give effect to any such Bail-in Action), which if the Bail-in Termination Amount is payable by the BRRD Party to the Creditor Counterparty may include, without limitation:

- (i) a reduction, in full or in part, of the Bail-in Termination Amount; and/or
- (ii) a conversion of all, or a portion of, the Bail-in Termination Amount into shares or other instruments of ownership, in which case the Creditor Counterparty acknowledges and accepts that any such shares or other instruments of ownership may be issued to or conferred upon it as a result of the Bail-in Action.

(b) Each party acknowledges and accepts that this provision is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understanding between the parties relating to the subject matter of the Agreement and that no further notice shall be required between the parties pursuant to the Agreement in order to give effect to the matters described herein.

- (c) The acknowledgements and acceptances contained in clauses (a) and (b) above will not apply if:
  - (i) the relevant resolution authority determines that the liabilities arising under the Agreement may be subject to the exercise of the UK Bail-in Power pursuant to the law of a third country governing such liabilities or a binding agreement concluded with such third country and in either case the UK Regulations have been amended to reflect such determination; and/or
  - (ii) the UK Regulations have been repealed or amended in such a way as to remove the requirement for either party to give or obtain the acknowledgements and acceptances contained in paragraphs (a) and (b).

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(d) Definitions.

“**Bail-in Action**” means the exercise of the UK Bail-in Power by the relevant resolution authority in respect of any transaction under the Agreement.

“**Bail-in Termination Amount**” means the early termination amount or early termination amounts (howsoever described), together with any accrued but unpaid interest thereon, in respect of all transactions (or if the Bail-in Action is exercised only with respect to transactions in one or more netting sets, all transactions relating to such netting set(s), as applicable) under the Agreement (before, for the avoidance of doubt, any such amount is written down or converted by the relevant resolution authority).

“**BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**BRRD Party**” means the party in respect of which the UK Bail-in Power has been exercised by the relevant resolution authority.

“**Creditor Counterparty**” means the party which is not the BRRD Party.

“**Excluded Liabilities**” means liabilities excluded from the scope of the contractual recognition of bail-in requirement pursuant to the UK Regulations.

“**UK Bail-in Power**” means any write-down or conversion power existing from time to time (including, without limitation, any power to amend or alter the maturity of eligible liabilities of an institution under resolution or amend the amount of interest payable under such eligible liabilities or the date on which interest becomes payable, including by suspending payment for a temporary period) under, and exercised in compliance with, the UK Regulations.

“**UK Regulations**” means any laws, regulations, rules or requirements in effect in the United Kingdom relating to the transposition of the BRRD as amended from time to time, including but not limited to, the Banking Act 2009 as amended from time to time, and the instruments, rules and standards created thereunder, pursuant to which the obligations of a regulated entity (or other affiliate of a regulated entity) can be reduced (including to zero), cancelled or converted into shares, other securities, or other obligations of such regulated entity or any other person.

A reference to a “regulated entity” is to any BRRD Undertaking as such term is defined under the PRA Rulebook promulgated by the United Kingdom Prudential Regulation Authority or to any person falling within IFPRU 11.6, of the FCA Handbook promulgated by the United Kingdom Financial Conduct Authority, both as amended from time to time, which includes certain credit institutions, investment firms, and certain of their parent or holding companies.]

[ISDA 2016 Bail-in Art 55 BRRD Protocol. The parties agree that the terms of the Attachment to the ISDA 2016 Bail-in Art 55 BRRD Protocol published by ISDA (“**BRRD Protocol**”) apply to the Agreement (which shall, for these purposes, be deemed to be a “Protocol Covered Agreement”) as if the parties had each adhered to the BRRD Protocol without amendment, with an Implementation Date of January 1, 2016.]

31. [Special Resolution Regime Termination Right].

(a) Upon the occurrence of a Crisis Prevention Measure, Crisis Management Measure or a Recognised Third-Country Resolution Action (each as defined in section 48Z(1) of the UK Banking Act 2009) and/or any Bail-in Action in relation to Dealer, Counterparty shall be entitled to exercise termination rights under, or rights to enforce its rights, in connection with the Agreement, to the extent that it would be entitled to do so under the Special Resolution Regime (as defined in the UK Banking Act 2009) if the Agreement were governed by the laws of any part of the United Kingdom.

(b) For the purposes of clause (a) above, Section 48Z of the U.K. Banking Act 2009 is to be disregarded to the extent that it relates to a Crisis Prevention Measure other than the making of a “mandatory reduction instrument” by the Bank of England under section 6B of the U.K. Banking Act 2009.]

32. [Capacity of Dealer]. The parties acknowledge and agree that Dealer is not a U.S. registered broker-dealer, and that its participation in the Agreement and any Transaction is pursuant and subject to Rule 15a-6. The parties acknowledge and agree that Dealer’s U.S. registered broker-dealer affiliate, [to be provided by Dealer] (its “**U.S. Affiliate**”), will act as Dealer’s chaperone for purposes of the activities contemplated in the Agreement, and that any reference to any obligation of Dealer in the Agreement, shall, to the extent that such obligations are required to be carried out by a registered broker or dealer under Rule 15a-6, be deemed to be a requirement that Dealer procure that U.S. Affiliate perform such obligations. Such obligations include but are not limited to effecting transactions, issuing confirmations, maintaining books and records, participating in oral communications, and obtaining certain representations and consents.]

33. [To be Provided by Dealer] as Agent. Dealer has appointed as its agent its indirect wholly-owned subsidiary, the Agent, for purposes of conducting on the Dealer’s behalf, a business in privately negotiated transactions in options and other derivatives. You hereby are advised that Dealer, the principal and stated counterparty in such transactions, has duly authorized the Agent to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products. The Agent has full, complete and unconditional authority to undertake such activities on behalf of Dealer. The Agent acts solely as agent and has no obligation, by way of issuance, endorsement, guarantee or otherwise, with respect to the performance of either party under this Master Confirmation or any Supplemental Confirmation. None of the Transactions is insured or guaranteed by the Agent.] .

34. [The parties agree and acknowledge that (i) [to be provided by Dealer] (the “**Agent**”), an affiliate of Dealer, has acted solely as agent and not as principal with respect to each Transaction hereunder and (ii) the Agent has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of any Transaction hereunder (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under each Transaction hereunder.]

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35. [U.S. Stay Regulations.] To the extent that the QFC Stay Rules are applicable hereto, then the parties acknowledge that (i) both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), and agree that the terms of the Protocol are incorporated into and form a part of this Master Confirmation, and for such purposes this Master Confirmation shall be deemed a Protocol Covered Agreement and each party shall be deemed to have the same status as “Regulated Entity” and/or “Adhering Party” as applicable to it under the Protocol. In the event of any inconsistencies between this Master Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (the “**QFC Stay Terms**”), the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, 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 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.

---

Counterparty hereby agrees (a) to check this Master Confirmation carefully and promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by signing this Master Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and promptly returning an executed copy to us.

Yours faithfully,

[DEALER][, By its Agent]

By: \_\_\_\_\_  
Name:  
Title:



---

Agreed and accepted by:

**NISOURCE INC.**

By: \_\_\_\_\_  
Name:  
Title:

---

ANNEX A

PRIVATE PLACEMENT PROCEDURES

If Counterparty delivers Unregistered Settlement Shares pursuant to Section 12 above (a “**Private Placement Settlement**”), then:

(a) all Unregistered Settlement Shares shall be delivered to Dealer (or any affiliate of Dealer designated by Dealer) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof;

(b) as of or prior to the date of delivery, Dealer and any potential purchaser of any such shares from Dealer (or any affiliate of Dealer designated by Dealer) identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of similar size (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them); *provided* that prior to receiving or being granted access to any such information, Dealer, such affiliate of Dealer or such potential purchaser, as the case may be, may be required by Counterparty to enter into a customary nondisclosure agreement with Counterparty in respect of any such due diligence investigation;

(c) as of the date of delivery, Counterparty shall enter into an agreement (a “**Private Placement Agreement**”) with Dealer (or any affiliate of Dealer designated by Dealer) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance commercially reasonably satisfactory to Dealer, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, Dealer and its affiliates and obligations to use best efforts to obtain customary opinions, accountants’ comfort letters and lawyers’ negative assurance letters, and shall provide for the payment by Counterparty of all commercially reasonable fees and expenses in connection with such resale, including all commercially reasonable fees and expenses of counsel for Dealer, and shall contain representations, warranties, covenants and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales; and

(d) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), Counterparty shall, if so requested by Dealer, prepare, in cooperation with Dealer, a private placement memorandum in form and substance reasonably satisfactory to Dealer.

---

In the case of a Private Placement Settlement, Dealer shall, in its good faith discretion, adjust the amount of Unregistered Settlement Shares to be delivered to Dealer hereunder in a commercially reasonable manner to reflect the fact that such Unregistered Settlement 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 Unregistered Settlement Shares.

If Counterparty delivers any Unregistered Settlement Shares in respect of a Transaction, Counterparty agrees that (i) such Shares may be transferred by and among Dealer and its affiliates and (ii) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed after the applicable Settlement Date, 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 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).

Annex A-2

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**EXHIBIT A**

SUPPLEMENTAL CONFIRMATION

**To:** NiSource Inc.  
**From:** [Dealer]  
**Re:** Issuer Share Forward Sale Transaction  
**Ref. No:** [ ]  
**Date:** [ ], 20[ ]

Ladies and Gentlemen:

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between [ ] (“**Dealer**”) and NiSource Inc. (“**Counterparty**”) (together, the “**Contracting Parties**”) as of the date hereof. This Supplemental Confirmation is a binding contract between Dealer and Counterparty as of the date hereof.

1. This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation, dated as of February 22, 2021 (the “**Master Confirmation**”), between the Contracting Parties, as amended and supplemented from time to time. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified below.
2. The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date:	As specified by Dealer in a pricing report to be furnished by Dealer to Counterparty promptly after the end of the Forward Hedge Selling Period (the “ <b>Pricing Report</b> ”)
Effective Date:	As specified by Dealer in the Pricing Report
Maturity Date:	As specified by Dealer in the Pricing Report, being the same day of the [ ] month after [the Trade Date]
Forward Hedge Selling Period:	As specified by Dealer in the Pricing Report
Number of Shares:	As specified by Dealer in the Pricing Report
Initial Forward Price:	As specified by Dealer in the Pricing Report
Forward Hedge Selling Commission Rate:	[ ]% [not more than 1%]
Spread:	[ ]%
Volume-Weighted Hedge Price:	As specified by Dealer in the Pricing Report
Threshold Price:	As specified by Dealer in the Pricing Report
Initial Stock Loan Rate:	[ ] basis points per annum
Maximum Stock Loan Rate:	[ ] basis points per annum
Forward Price Reduction Dates	As specified in Schedule I hereto
Forward Price Reduction Amounts	As specified in Schedule I hereto
Office of Dealer:	[ ]

Exhibit A-1

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Counterparty hereby agrees (a) to check this Supplemental Confirmation carefully and promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by signing this Supplemental Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and promptly returning an executed copy to us.

Yours faithfully,

[DEALER][, By its Agent]

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A-2

---

Agreed and accepted by:

NISOURCE INC.

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

Name:

Title:

Exhibit A-3

Schedule I

FORWARD PRICE REDUCTION AMOUNTS

<u>Forward Price Reduction Date:</u>	<u>Forward Price Reduction Amount:</u>
[ ], 20[ ]	USD [ ]
[ ], 20[ ]	USD [ ]
[ ], 20[ ]	USD [ ]
[ ], 20[ ]	USD [ ]

REGULAR DIVIDEND AMOUNTS

For any calendar quarter ending on or prior to [December 31, 20[ ]]:	USD [ ]
For any calendar quarter ending after [December 31, 20[ ]]:	USD [ ]

Schedule I-1

**EXHIBIT B**

PRICING REPORT

**To:** NiSource Inc.  
**From:** [Dealer]  
**Re:** Issuer Share Forward Sale Transaction  
**Ref. No:** [ ]  
**Date:** [ ], 20[ ]

Ladies and Gentlemen:

This Pricing Report is furnished by [Dealer] (“**Dealer**”) to NiSource Inc. (“**Counterparty**”) (together, the “**Contracting Parties**”) in accordance with the Supplemental Confirmation dated [ ], 20[ ] (the “**Supplemental Confirmation**”) between the Contracting Parties. This Pricing Report specifies the terms required by the Supplemental Confirmation and supplements, forms part of, and is subject to the Supplemental Confirmation and the Master Confirmation, dated as of February 22, 2021 (the “**Master Confirmation**”), between the Contracting Parties, as amended and supplemented from time to time. The terms required by the Supplemental Confirmation are as follows, with such terms determined in accordance with the Master Confirmation:

Trade Date: [ ], 20[ ]  
Effective Date: [ ], 20[ ]  
Maturity Date: [ ], 20[ ]  
Forward Hedge Selling Period: [ ]Trading Days  
Number of Shares: [ ]  
Initial Forward Price: USD [ ]  
Volume-Weighted Hedge Price: USD [ ]  
Threshold Price: USD [ ]

Kindly acknowledge this Pricing Report upon receipt by signing this page and immediately returning an executed copy to us.

Yours faithfully,

[DEALER]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged by:

NISOURCE INC.

By: \_\_\_\_\_  
Name:  
Title:



**SIDLEY**

SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN STREET  
CHICAGO, IL 60603  
+1 312 853 7000  
+1 312 853 7036 FAX

**Exhibit 5.1**

AMERICA • ASIA PACIFIC • EUROPE

February 22, 2021

NiSource Inc.  
801 East 86th Avenue  
Merrillville, Indiana 46410

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-3, File No. 333-234422 (the "Registration Statement"), filed by NiSource Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), which Registration Statement became effective upon filing pursuant to Rule 462(e) under the Securities Act. Pursuant to the Registration Statement, the Company is offering from time to time shares (the "Shares") of its Common Stock, \$0.01 par value per share, having an aggregate gross sales price up to \$750,000,000 pursuant to (a) six separate Equity Distribution Agreements, each dated February 22, 2021, (i) among the Company, Barclays Capital Inc., as sales agent and as forward seller, and Barclays Bank PLC, as forward purchaser, (ii) among the Company, J.P. Morgan Securities LLC, as sales agent and as forward seller, and JPMorgan Chase Bank, National Association, as forward purchaser, (iii) between the Company and KeyBanc Capital Markets Inc., as sales agent, forward seller and forward purchaser, (iv) among the Company, Mizuho Securities USA LLC, as sales agent and as forward seller, and Mizuho Markets Americas LLC, as forward purchaser, (v) between the Company and Morgan Stanley & Co. LLC, as sales agent, forward seller and forward purchaser, and (vi) among the Company, Wells Fargo Securities, LLC, as sales agent and as forward seller, and Wells Fargo Bank, National Association, as forward purchaser (collectively, the "Equity Distribution Agreements"), and (b) six separate Master Confirmations for Forward Sale, each dated February 22, 2021, between the Company and each of Barclays Bank PLC, JPMorgan Chase Bank, National Association, KeyBanc Capital Markets Inc., Mizuho Markets Americas LLC, Morgan Stanley & Co. LLC and Wells Fargo Bank, National Association, respectively, as forward purchasers (collectively and together with the Equity Distribution Agreements, the "Agreements").

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined the Registration Statement, the Agreements, the Company's certificate of incorporation and the resolutions adopted by the board of directors of the Company relating to the Registration Statement and the issuance of the Shares by the Company. We have

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# SIDLEY

NiSource Inc.  
February 22, 2021  
Page 2

also examined originals, or copies of originals certified to our satisfaction, of such agreements, documents, certificates and statements of the Company and other corporate documents and instruments, and have examined such questions of law, as we have considered relevant and necessary as a basis for this opinion letter. We have assumed the authenticity of all documents submitted to or obtained by us as originals, the genuineness of all signatures, the legal capacity of all persons and the conformity with the original documents of any copies thereof submitted to or obtained by us for examination. As to facts relevant to the opinions expressed herein, we have relied without independent investigation or verification upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations of public officials and officers and other representatives of the Company.

Based on and subject to the foregoing and the other limitations, qualifications and assumptions set forth herein, we are of the opinion that the issuance and sale of the Shares covered by the Registration Statement pursuant to the Agreements have been duly authorized by the Company and, when (A) the number of Shares to be offered, issued and sold by the Company from time to time and the respective pricing terms, times and dates of offering, issuance and sale have been duly authorized and approved by one or more duly authorized officers of the Company, all as provided in, and in compliance with the parameters, limitations and other terms set forth in resolutions duly adopted by the board of directors of the Company and (B) certificates representing such Shares shall have been duly executed, countersigned and registered and duly delivered to the purchasers thereof against payment of the agreed consideration therefor in an amount not less than the aggregate par value thereof or, if any such Shares are to be issued in uncertificated form, the Company's books shall reflect the issuance of such Shares to the purchasers thereof against payment of the agreed consideration therefor in an amount not less than the aggregate par value thereof, in accordance with the applicable Agreements, such Shares will be validly issued, fully paid and non-assessable.

For the purposes of this opinion letter, we have assumed that, at the time of the issuance, sale and delivery of Shares pursuant to the Agreements: (i) the authorization thereof by the Company will not have been modified or rescinded, and there will not have occurred any change in law affecting the validity thereof; (ii) the certificate of incorporation and bylaws of the Company, as currently in effect, will not have been modified or amended and will be in full force and effect; and (iii) the number of such Shares will not exceed the number authorized and unissued shares of Common Stock of the Company that have not been reserved for issuance for other purposes.

This opinion letter is limited to the General Corporation Law of the State of Delaware. We express no opinion as to the laws, rules or regulations of any other jurisdiction, including, without limitation, the federal laws of the United States of America or any state securities or blue sky laws.

We hereby consent to the filing of this opinion letter as an Exhibit to the Registration Statement and to all references to our Firm included in or made a part of the

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**SIDLEY**

NiSource Inc.  
February 22, 2021  
Page 3

Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Sidley Austin LLP

Exhibit 99.1



February 22, 2021

**FOR ADDITIONAL INFORMATION**

**Media**

Ken Stammen  
Corporate Media Relations  
(614) 460-5544  
kstammen@nisource.com

**Investors**

Randy Hulen  
VP, Investor Relations &  
Treasurer  
(219) 647-5688  
rghulen@nisource.com

**NiSource Announces \$750 Million At-The-Market (ATM)  
Equity Issuance Program**

MERRILLVILLE, Ind. – NiSource Inc. (NYSE: NI) (“NiSource”) announced today that it has established an “at-the-market” (“ATM”) equity offering program under which it may sell shares of its common stock having an aggregate sales price of up to \$750 million.

NiSource has entered into separate equity distribution agreements with each of Barclays Capital Inc., J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Mizuho Securities USA LLC, Morgan Stanley and Wells Fargo Securities, LLC in their respective capacities as sales agents and as forward sellers (collectively, the “Agents”). Pursuant to these agreements, sales of shares of NiSource’s common stock may be made in transactions that are deemed to be “at-the-market” offerings, including sales made by means of ordinary brokers’ transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale or as agreed to with the applicable Agent.

In addition to the issuance and sale of shares of its common stock through the Agents, NiSource may enter into forward sale agreements with the Agents or certain of their respective affiliates, each in their capacity as forward purchasers (collectively, the “Forward Purchasers”). In connection with each such forward sale agreement, the applicable Forward Purchaser will, at NiSource’s request, borrow from third parties and, through the relevant Agent, sell a number of shares of common stock equal to the number of shares underlying such forward purchase agreement to hedge such forward sale agreement.

NiSource intends to use the proceeds from the sales, if any, of the shares of its common stock for general corporate purposes, including to finance capital expenditures, additions to working capital and repayment of existing indebtedness.

A registration statement relating to these securities has become effective under the Securities Act of 1933, as amended. The offering is being made by means of a prospectus supplement to the prospectus contained in the registration statement. Before making an investment in these securities, potential investors should read the prospectus supplement and the accompanying prospectus for more complete information about NiSource and the offering. Potential investors may obtain these documents for free by visiting EDGAR on the Securities and Exchange Commission’s (“SEC”) website at [www.sec.gov](http://www.sec.gov). Alternatively, potential investors may contact any Agent participating in the offering, who will arrange to send them these documents: Barclays Capital Inc., 745 Seventh Avenue, New York, NY 10019; J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155

Long Island Avenue, Edgewood, NY 11717, Telephone: (866) 803-9204; KeyBanc Capital Markets Inc., 127 Public Square, 4th Floor, Cleveland, OH 44114; Mizuho Securities USA LLC, 1271 Avenue of the Americas, 3rd Floor, New York, NY 10020; Morgan Stanley at Morgan Stanley & Co. LLC, Attention: Prospectus Department, 180 Varick Street, 2nd Floor, New York, NY 10014; Wells Fargo Securities, LLC, 500 West 33rd Street, New York, NY 10001.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities, in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

### **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource has approximately 7,500 employees. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found on its website. The contents of our website are not incorporated by reference herein. NI-F

### **Forward-Looking Statements**

This press release contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. Expressions of future goals and expectations and similar expressions, including “may,” “will,” “should,” “could,” “would,” “aims,” “seeks,” “expects,” “plans,” “anticipates,” “intends,” “believes,” “estimates,” “predicts,” “potential,” “targets,” “forecast,” and “continue,” reflecting something other than historical fact are intended to identify forward-looking statements. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially. Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include, among other things, our ability to execute our business plan or growth strategy, including utility infrastructure investments; potential incidents and other operating risks associated with our business; our ability to adapt to, and manage costs related to, advances in technology; impacts related to our aging infrastructure; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the success of our electric generation strategy; construction risks and natural gas costs and supply risks; fluctuations in demand from residential and commercial customers; fluctuations in the price of energy commodities and related transportation costs or an inability to obtain an adequate, reliable and cost-effective fuel supply to meet customer demands; the attraction and retention of a qualified workforce and ability to maintain good labor relations; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; potential cyber-attacks; any damage to our reputation; any remaining liabilities or impact related to the sale of the Columbia Gas of Massachusetts business; the impacts of natural disasters, potential terrorist attacks or other catastrophic events; the impacts of climate change and extreme weather conditions; our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; adverse economic and capital market conditions or increases in interest rates; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; continuing and potential future impacts from the COVID-19 pandemic; economic conditions in certain industries; the reliability of customers and suppliers to fulfill their payment and contractual obligations; the ability of our subsidiaries to generate cash; pension funding obligations; potential impairments of goodwill; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; potential remaining liabilities related to a series of fires and explosions that occurred in Lawrence, Andover and North Andover, Massachusetts related to the delivery of natural gas by Columbia of Massachusetts in September 2018 (the “Greater Lawrence Incident”); compliance with the agreements entered into with the U.S. Attorney’s Office to settle the U.S. Attorney’s Office’s investigation relating to the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; changes in taxation; and other matters set forth in the “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” sections of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, and our subsequent SEC filings, some of which risks are beyond our control.

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All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

# #

**FORM 8-K**

**FEBRUARY 17, 2021**

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): February 17, 2021

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

DE

(State or other jurisdiction  
of incorporation or organization)

001-16189

Commission  
file number

35-2108964

(I.R.S. Employer  
Identification No.)

801 East 86th Avenue  
Merrillville, IN

(Address of principal executive offices)

46410

(Zip Code)

Registrant's telephone number, including area code **(877) 647-5990**

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 Stock, par value \$0.01 per share	NI	NYSE
Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE

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

Emerging growth company

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



ITEM 2.02. RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On February 17, 2021, NiSource Inc. (the “Company”) reported its financial results for the year ended December 31, 2020. The Company’s press release, dated February 17, 2021, is attached as Exhibit 99.1.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	<a href="#">Press Release, dated February 17, 2021, issued by NiSource Inc.</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Schema Document
101.CAL	Inline XBRL Calculation Linkbase Document
101.LAB	Inline XBRL Labels Linkbase Document
101.PRE	Inline XBRL Presentation Linkbase Document
101.DEF	Inline XBRL Definition Linkbase Document
104	Cover page Interactive Data File (formatted as inline XBRL, and contained in Exhibit 101.)

SIGNATURES

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

NiSource Inc.  
\_\_\_\_\_  
(Registrant)

Date: February 17, 2021

By:

/s/ Gunnar J. Gode  
\_\_\_\_\_  
Gunnar J. Gode  
Vice President, Chief Accounting Officer and Controller  
(Principal Accounting Officer)

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EXHIBIT INDEX

Exhibit Number	Description
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104	Cover page Interactive Data File (formatted as inline XBRL, and contained in Exhibit 101.)

# NEWS



FOR IMMEDIATE RELEASE

WWW.NISOURCE.COM

February 17, 2021

## FOR ADDITIONAL INFORMATION

### Media

Ken Stammen  
Corporate Media Relations  
(614) 460-5544  
kstammen@nisource.com

### Investors

Randy Hulen  
VP, Investor Relations and Treasurer  
(219) 647-5688  
rghulen@nisource.com

## NiSource Reports 2020 Results

- Safety and asset modernization, renewable generation transition and continued customer affordability remain top priorities
- 2021 non-GAAP earnings guidance and Investor Day commitments reaffirmed
- Generation transition advances with first two Indiana wind projects completed
- Steps completed to reposition company to execute on long-term growth opportunities

**MERRILLVILLE, Ind.** - NiSource Inc. (NYSE: NI) today announced, on a GAAP basis, net income available to common shareholders for the three months ended December 31, 2020 of \$70.7 million, or \$0.18 per share, compared to a net loss available to common shareholders of \$153.0 million, or \$0.41 per share, for the same period of 2019. For the 12 months ended December 31, 2020, NiSource's GAAP net loss available to common shareholders was \$72.7 million, or \$0.19 per share, compared to net income available to common shareholders of \$328.0 million, or \$0.88 per share, for the same period of 2019.

NiSource also reported non-GAAP net operating earnings available to common shareholders of \$130.1 million, or \$0.34 per share, for the three months ended December 31, 2020, compared to non-GAAP net operating earnings available to common shareholders of \$169.6 million, or \$0.45 per share, for the same period of 2019. For the 12 months ended December 31, 2020, NiSource's non-GAAP net operating earnings available to common shareholders was \$507.5 million, or \$1.32 per share, compared to \$494.7 million, or \$1.32 per share, for the same period of 2019. Schedule 1 of this press release contains a complete reconciliation of GAAP measures to non-GAAP measures.

NiSource's GAAP results for the 12 months ended December 31, 2020, includes a \$243.5 million loss on early extinguishment of long-term debt and a \$412.4 million loss due to the re-classification of Columbia Gas of Massachusetts' assets as held for sale resulting from the February 2020 agreement to sell these assets to Eversource Energy (NYSE: ES). This sales transaction closed on October 9, 2020.

"2020 was a year like no other, but the NiSource team remained focused on our core mission of delivering safe, reliable energy service to our customers and the communities we serve throughout the COVID-19 pandemic, while at the same time completing steps to reposition the company to execute on significant long term growth opportunities," said NiSource President and CEO **Joe Hamrock**. "Our 2020 financial and operational results reflect the resiliency of the business, and we continued to execute on our safety and asset modernization programs as well as our electric generation transition strategy. In Indiana, we completed two wind power projects in December, and

we continue to expect that our infrastructure and generation investments will drive compound annual growth of 7 to 9 percent in net operating earnings per share from 2021 through 2024 while reducing greenhouse gas emissions 90 percent by 2030."

NiSource achieved a number of key milestones in 2020:

- Maintained safe, reliable service while supporting customers with payment flexibility through the COVID pandemic
- Invested \$1.7 billion in its gas & electric utilities, including replacement of 274 miles of priority pipe, 37 miles of underground electric cable and 1,380 electric poles
- Advanced and matured its Safety Management System (SMS) and safety enhancement initiatives
- Completed the sale of the Columbia Gas of Massachusetts business to Eversource
- Made significant progress on its electric generation transition with two wind projects completed, and regulatory approval received for three other renewable projects
- Lowered the weighted average interest rate on its long-term debt by more than 60 basis points and enhanced liquidity through the COVID-19 pandemic
- Launched the transformative NiSource Next initiative to build organizational capabilities, support safety investments and enhance efficiency
- Provided investors a new infrastructure investment-driven long-term growth plan through 2024, including \$1.8 - \$2 billion in renewable generation investments
- Made additional progress on its sustainability strategy, earning a spot on the Dow Jones Sustainability North America Index for the seventh straight year
- Continued its strong customer growth across its diverse six-state footprint, with over 30,000 net new gas customers added

### **2021 and Long-Term Financial Commitments Reaffirmed**

NiSource is reaffirming its 2021 non-GAAP net operating earnings guidance in the range of \$1.28 to \$1.36 per share. The company expects to make capital investments of \$1.9 billion to \$2.1 billion in 2021.

As outlined at its 2020 Investor Day, NiSource continues to expect to grow its net operating earnings per share by 7 to 9% on a compound annual growth rate basis from 2021 through 2024, including near-term annual growth of 5 to 7% through 2023. NiSource expects to make growth, safety and modernization investments of \$1.9 to \$2.2 billion annually through 2024, as well as a total of \$1.8 to \$2.0 billion of investments in renewable generation assets. These investments are expected to drive compound annual rate base growth of 10 to 12% through 2024.

NiSource remains committed to maintaining its current investment-grade credit ratings. The company has investment-grade ratings with Fitch Ratings (BBB), Moody's (Baa2) and Standard & Poor's (BBB+). As of December 31, 2020, NiSource had approximately \$1.7 billion in net available liquidity, consisting of cash and available capacity under its credit facility and accounts receivable securitization programs.

NiSource reminds investors that it does not provide a GAAP equivalent of its earnings guidance due to the impact of unpredictable factors such as fluctuations in weather, asset sales and impairments, and other items included in GAAP results.

### **System-wide Safety Enhancements Update**

The Safety Management System (SMS) transitioned in 2020 from an accelerated project launch to an established operating model within NiSource. With the continued support and advice from the independent Quality Review Board, the company is continuing to mature its SMS processes, capabilities and talent as it collaborates within and across industries to enhance safety and reduce operational risk. Safety milestones in 2020 include:

- Successfully deployed automatic shutoff device and remote monitoring, with 70% of low pressure systems now protected
- Began implementing and aligning SMS within the electric segment
- Launched mobile gas leak detection pilot projects and implemented a service line mapping strategy to enhance records quality across the footprint
- Added clearances and other layers of protection to critical field operating activities
- The final safety recommendation around emergency preparedness and response was closed by the National Transportation Safety Board
- Earned ISO 9001 certification for both the NiSource gas meter shops and the fabrication facility, a strong first step in a continuing quality effort

"SMS is built on our culture of empowering everyone to report and identify risk including the authority to stop work whenever necessary, enhancing process safety with layers of protection and building accountability for effective asset management to reduce risk," Hamrock said.

#### **Fourth Quarter 2020 and Recent Business Highlights**

##### **Electric Operations**

Northern Indiana Public Service Company (NIPSCO) continues to execute on an electric generation transition consistent with the preferred pathway from its 2018 Integrated Resource Plan, which outlines plans to retire nearly 80% of its remaining coal-fired generation by 2023, and retire all coal generation by the end of 2028, to be replaced by lower-cost, reliable and cleaner options. The plan is expected to be a key element of a 90% reduction in NiSource's greenhouse gas emissions by 2030 compared with 2005 levels, and to save NIPSCO electric customers more than \$4 billion over 30 years.

NIPSCO expects to make \$1.8 to \$2.0 billion of renewable generation investments and has executed agreements representing approximately \$1.25 billion of this anticipated investment. The remaining investments focused on additional solar capacity are in advanced commercial negotiations. Half of the capacity in the replacement plan is targeted to be owned by joint ventures that will include NIPSCO and tax-equity partners as the members. The remaining new capacity is expected to be primarily in the form of power purchase agreements (PPAs). The planned retirement of the Michigan City Generating Station could create additional NIPSCO capital investment opportunities.

Recent electric operations highlights include:

- NIPSCO completed its **Rosewater** joint venture and **Jordan Creek** PPA wind projects in December 2020. Construction continues on the **Indiana Crossroads** joint venture wind project, which is expected to go into service by the end of 2021.
- The Indiana Utility Regulatory Commission (IURC) in January 2021 approved two NIPSCO solar PPAs with **NextEra Energy Resources (NextEra)** as developer — **Brickyard and Greensboro**. These projects have a combined nameplate capacity of 300 megawatts and 30 megawatts of storage.
- In November 2020, NIPSCO filed applications with the IURC for approval of the **Dunns Bridge I, Dunns Bridge II** and **Cavalry** joint venture solar projects. In October 2020, NIPSCO finalized build transfer agreements with NextEra for these solar and storage facilities, which are expected to be operational in 2022 and 2023. NextEra will construct the projects, and NIPSCO will enter into joint ventures to own, operate and maintain some facets of these assets once construction is complete. An IURC order is expected in the second quarter of 2021.
- In December 2020, NIPSCO announced a long-term PPA with the clean energy infrastructure business of **Capital Dynamics** to develop **Gibson Solar**, a 280 megawatt solar project in Gibson County, Indiana. NIPSCO filed an application with the IURC for

approval of this project in January 2021. Construction is expected to begin in 2022, with commercial operations to begin in 2023. Also in December 2020, NIPSCO filed an application with the IURC for approval of the Green River Solar PPA in Kentucky.

- NIPSCO continues to execute on its seven year **electric infrastructure modernization program**, which includes enhancements to its transmission and distribution system designed to enhance safety and reliability. The program, originally approved by the IURC in 2016, includes approximately \$1.2 billion in electric infrastructure improvements expected to be made through 2022. The company's latest tracker update request, covering \$122.3 million in incremental capital investments made from July 2019 through July 2020, was approved by the IURC on January 27, 2021, with rates effective in February 2021.

### Gas Distribution Operations

- The Maryland Public Service Commission in November 2020 approved a settlement in the **Columbia Gas of Maryland** base rate case request. The approved settlement supports further upgrading and replacement of the company's underground natural gas pipelines and provides for an annual revenue increase of \$3.3 million, including \$1.3 million of current tracker revenue. New rates went into effect in December 2020.
- **Columbia Gas of Pennsylvania's** base rate case remains pending before the Pennsylvania Public Utility Commission. The request, as modified on December 22, 2020, seeks an annual revenue increase of \$76.8 million to invest in, modernize and upgrade the company's existing natural gas distribution system as well as maintain the continued safety of the system. An order is expected in the first quarter of 2021, with new rates retroactive to January 23, 2021.
- NIPSCO continues to execute on its **long-term gas modernization program**, which includes nearly \$950 million in capital investments to be made through 2025 and recovered through semi-annual adjustments to the gas **Transmission, Distribution and Storage Improvement Charge (TDSIC)** tracker. On December 23, 2020, the IURC approved **NIPSCO's** latest tracker update request covering \$26 million in incremental capital investments made between January 2020 and June 2020. New rates took effect in January 2021.

**Additional information for the year ended December 31, 2020, is available on the Investors section of [www.nisource.com](http://www.nisource.com), including segment and financial information and our presentation to be discussed at the company's fourth quarter 2020 earnings conference call scheduled for February 17, 2021 at 11:00 a.m. ET.**

### About NiSource

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 7,500 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve. NiSource is a member of the Dow Jones Sustainability - North America Index and the Bloomberg Gender Equality Index and has been named by *Forbes* magazine among America's Best Large Employers since 2016. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found at [www.nisource.com](http://www.nisource.com). Follow us at [www.facebook.com/nisource](https://www.facebook.com/nisource), [www.linkedin.com/company/nisource](https://www.linkedin.com/company/nisource) or [www.twitter.com/nisourceinc](https://www.twitter.com/nisourceinc). NI-F

### **Forward-Looking Statements**

This press release contains “forward-looking statements,” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially.

Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include, among other things, our ability to execute our business plan or growth strategy, including utility infrastructure investments; potential incidents and other operating risks associated with our business; our ability to adapt to, and manage costs related to, advances in technology; impacts related to our aging infrastructure; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the success of our electric generation strategy; construction risks and natural gas costs and supply risks; fluctuations in demand from residential and commercial customers; fluctuations in the price of energy commodities and related transportation costs or an inability to obtain an adequate, reliable and cost-effective fuel supply to meet customer demands; the attraction and retention of a qualified workforce and ability to maintain good labor relations; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; potential cyber-attacks; any damage to our reputation; any remaining liabilities or impact related to the sale of Massachusetts Business; the impacts of natural disasters, potential terrorist attacks or other catastrophic events; the impacts of climate change and extreme weather conditions; our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; adverse economic and capital market conditions or increases in interest rates; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; continuing and potential future impacts from the COVID-19 pandemic; economic conditions in certain industries; the reliability of customers and suppliers to fulfill their payment and contractual obligations; the ability of our subsidiaries to generate cash; pension funding obligations; potential impairments of goodwill; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; potential remaining liabilities related to the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney’s Office to settle the U.S. Attorney’s Office’s investigation relating to the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; changes in taxation; and other matters set forth in Item 1, “Business,” Item 1A, “Risk Factors” and Part II. Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” of the company’s annual report on Form 10-K for the year ended December 31, 2020, some of which risks are beyond our control. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.



**Regulation G Disclosure Statement**

This press release includes financial results and guidance for NiSource with respect to net operating earnings available to common shareholders, which is a non-GAAP financial measure as defined by the Securities and Exchange Commission's (SEC) Regulation G. The company includes this measure because management believes it permits investors to view the company's performance using the same tools that management uses and to better evaluate the company's ongoing business performance. With respect to such guidance, it should be noted that there will likely be a difference between this measure and its GAAP equivalent due to various factors, including, but not limited to, fluctuations in weather, the impact of asset sales and impairments, and other items included in GAAP results. The company is not able to estimate the impact of such factors on GAAP earnings and, as such, is not providing earnings guidance on a GAAP basis. In addition, the company is not able to provide a reconciliation of its non-GAAP net operating earnings guidance to its GAAP equivalent without unreasonable efforts.

Schedule 1 - Reconciliation of Consolidated Net Income (Loss) Available to Common Shareholders to Net Operating Earnings Available to Common Shareholders (Non-GAAP) *(unaudited)*

<i>(in millions, except per share amounts)</i>	Three Months Ended December 31,		Twelve Months Ended December 31,	
	2020	2019	2020	2019
<b>GAAP Net Income (Loss) Available to Common Shareholders</b>	\$ 70.7	\$ (153.0)	\$ (72.7)	\$ 328.0
<b>Adjustments to Operating Income (Loss):</b>				
<b>Operating Revenues:</b>				
Weather - compared to normal	8.0	(11.8)	24.0	(24.8)
Massachusetts Business transaction revenue <sup>(1)</sup>	(9.0)	—	(9.0)	—
<b>Operating Expenses:</b>				
Greater Lawrence Incident <sup>(2)</sup>	1.3	(54.2)	16.7	(233.6)
Plant retirement costs <sup>(3)</sup>	—	—	4.6	—
NiSource Next initiative <sup>(4)</sup>	19.2	—	45.8	—
Massachusetts Business sale related amounts <sup>(5)</sup>	18.9	414.5	400.3	414.5
Loss (Gain) on sale of assets, net	(1.4)	0.1	(1.8)	—
Total adjustments to operating income (loss)	37.0	348.6	480.6	156.1
<b>Other Income (Deductions):</b>				
Loss on early extinguishment of long-term debt <sup>(6)</sup>	0.1	—	243.5	—
<b>Income Taxes:</b>				
Tax effect of above items <sup>(7)</sup>	(10.4)	(90.5)	(191.8)	(38.2)
Income taxes - discrete items <sup>(8)</sup>	32.7	64.5	47.9	48.8
Total adjustments to net income (loss)	59.4	322.6	580.2	166.7
<b>Net Operating Earnings Available to Common Shareholders (Non-GAAP)</b>	\$ 130.1	\$ 169.6	\$ 507.5	\$ 494.7
<b>Basic Average Common Shares Outstanding</b>	387.0	377.2	384.3	374.6
<b>GAAP Basic Earnings (Loss) Per Share</b>	\$ 0.18	\$ (0.41)	\$ (0.19)	\$ 0.88
Adjustments to basic earnings (loss) per share	0.16	0.86	1.51	0.44
<b>Non-GAAP Basic Net Operating Earnings Per Share</b>	\$ 0.34	\$ 0.45	\$ 1.32	\$ 1.32

<sup>(1)</sup>Represents certain reimbursed costs for services rendered as part of the sale of the Massachusetts Business to Eversource that occurred on October 9, 2020.

<sup>(2)</sup>Represents costs incurred for estimated third-party claims and related other expenses as a result of the Greater Lawrence Incident, net of insurance recoveries recorded.

<sup>(3)</sup>Represents costs incurred in connection with the planned retirement of the Schahfer Generating Station. Includes costs for write downs of certain capital projects and materials and supplies inventory balances.

<sup>(4)</sup>Represents incremental severance and third-party consulting costs incurred in connection with the NiSource Next initiative.

<sup>(5)</sup>2020 represents third-party consulting costs incurred for the separation and transition of the Massachusetts Business and the loss on sale to Eversource, offset by depreciation and amortization expense that was ceased for GAAP purposes as a result of classifying the Massachusetts Business as held for sale. 2019 represents a non-cash impairment of the Columbia of Massachusetts franchise rights and of the goodwill attributable to Columbia of Massachusetts as a result of the announced sale to Eversource.

<sup>(6)</sup>Represents non-recurring costs incurred for the early redemption of \$1,603.6 million in long-term notes, consisting primarily of early redemption premiums.

<sup>(7)</sup>Represents income tax expense calculated using the statutory tax rates by legal entity.

<sup>(8)</sup>2020 represents non-deductible fines and penalties related to Greater Lawrence Incident and tax discrete adjustments in connection with the sale of the Massachusetts Business, including (i) deferred taxes on a TCJA regulatory liability divested, (ii) consolidated state deferred taxes and (iii) associated valuation allowance related to state net operating loss carryforward. 2019 represents (i) the non-deductible goodwill impairment, (ii) non-deductible fines and penalties and (iii) adjustments to consolidated state deferred taxes, all related to the Greater Lawrence Incident.

**FORM 8-K**

**NOVEMBER 2, 2020**

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): November 2, 2020

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

DE

(State or other jurisdiction  
of incorporation or organization)

001-16189

Commission  
file number

35-2108964

(I.R.S. Employer  
Identification No.)

801 East 86th Avenue  
Merrillville, IN

(Address of principal executive offices)

46410

(Zip Code)

Registrant's telephone number, including area code **(877) 647-5990**

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 Stock, par value \$0.01 per share	NI	NYSE
Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE

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

Emerging growth company

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

ITEM 2.02. RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On November 2, 2020, NiSource Inc. (the “Company”) reported its financial results for the year ended September 30, 2020. The Company’s press release, dated November 2, 2020, is attached as Exhibit 99.1.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	<a href="#">Press Release, dated November 2, 2020, issued by NiSource Inc.</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Schema Document
101.CAL	Inline XBRL Calculation Linkbase Document
101.LAB	Inline XBRL Labels Linkbase Document
101.PRE	Inline XBRL Presentation Linkbase Document
101.DEF	Inline XBRL Definition Linkbase Document
104	Cover page Interactive Data File (formatted as inline XBRL, and contained in Exhibit 101.)

SIGNATURES

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

\_\_\_\_\_  
NiSource Inc.  
(Registrant)

Date: November 2, 2020

By:

\_\_\_\_\_  
/s/ Gunnar J. Gode  
Gunnar J. Gode  
Vice President, Chief Accounting Officer and Controller  
(Principal Accounting Officer)

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EXHIBIT INDEX

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# NEWS



FOR IMMEDIATE RELEASE

WWW.NISOURCE.COM

November 2, 2020

## FOR ADDITIONAL INFORMATION

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## NiSource Reports Third Quarter 2020 Results

- Safety & asset modernization, renewable generation transition and continued customer affordability remain top priorities
- 2020 CapEx and 2021 non-GAAP NOEPS guidance reaffirmed
- Additional renewable generation projects announced in Indiana
- Sale of Columbia Gas of Massachusetts closed in October
- Investor Day commitments reaffirmed
- Cost and regulatory mitigation efforts reduce financial impacts of COVID-19

**MERRILLVILLE, Ind.** - NiSource Inc. (NYSE: NI) today announced, on a GAAP basis, a net loss available to common shareholders for the three months ended September 30, 2020 of \$186.7 million, or \$0.49 per share, compared to a net loss available to common shareholders of \$7.2 million, or \$0.02 per share, for the same period of 2019. For the nine months ended September 30, 2020, NiSource's GAAP net loss available to common shareholders was \$143.4 million, or \$0.37 per share, compared to net income available to common shareholders of \$481.0 million, or \$1.29 per share, for the same period of 2019.

NiSource also reported non-GAAP net operating earnings available to common shareholders of \$36.3 million, or \$0.09 per share, for the three months ended September 30, 2020, compared to a net operating loss available to common shareholders of \$1.7 million, or \$0.00 per share, for the same period of 2019. For the nine months ended September 30, 2020, NiSource's non-GAAP net operating earnings available to common shareholders was \$377.4 million, or \$0.98 per share, compared to \$325.1 million, or \$0.87 per share, for the same period of 2019. Schedule 1 of this press release contains a complete reconciliation of GAAP measures to non-GAAP measures.

NiSource's GAAP results for the nine months ended September 30, 2020, includes a \$243.4 million loss on early extinguishment of long-term debt and a \$400.2 million loss due to the re-classification of Columbia Gas of Massachusetts' assets as held for sale resulting from the February 2020 agreement to sell these assets to Eversource Energy (NYSE: ES). This sales transaction closed on October 9, 2020.

"NiSource continues to execute its plan to deliver premium value from our 100 percent regulated electric and gas utility platform," said NiSource President and CEO **Joe Hamrock**. "Our teams are focused on continued execution of our safety and asset modernization programs and our transition to renewable generation. These investments are expected to drive compound annual growth of 7 to 9 percent in net operating earnings per share from 2021 through 2024 while reducing greenhouse



gas emissions 90 percent by 2030. Sustaining this level of execution while maintaining safe, reliable energy service through the COVID-19 pandemic is a testament to the thousands of dedicated employees throughout NiSource.

"With the announcement of additional solar and storage energy projects in Indiana and the closing of the sale of Columbia Gas of Massachusetts last month, we have strengthened our foundation for future growth," Hamrock concluded.

### **2020 Capital, 2021 NOEPS Guidance Reaffirmed; Long-term Capital and Growth Forecasts through 2024 Also Reaffirmed**

NiSource is reaffirming its 2020 capital investment forecast of \$1.7 to \$1.8 billion, and its 2021 non-GAAP net operating earnings guidance in the range of \$1.28 to \$1.36 per share. As outlined at its Investor Day on September 29, 2020, the company continues to expect to grow its net operating earnings per share by 7 to 9% on a compound annual growth rate basis from 2021 through 2024, including near-term annual growth of 5 to 7% through 2023. NiSource expects to make growth, safety and modernization investments of \$1.9 to \$2.2 billion annually during the period, as well as a total of \$1.8 to \$2.0 billion of investments in renewable generation assets.

### **Additional Renewable Generation Investments Announced in Indiana**

On October 21, 2020, NIPSCO announced that it plans to bring an additional 900 megawatts of renewable generation capacity to Indiana with the **Dunns Bridge I, Dunns Bridge II** and **Cavalry Solar Energy Centers** as part of the company's generation transition strategy. NIPSCO finalized three build transfer agreements with NextEra Energy Resources for these solar and storage facilities, which are expected to be operational in 2022 and 2023.

NextEra Energy Resources will construct the projects and NIPSCO will enter into joint ventures to own, operate and maintain some facets of these assets once construction is complete. NIPSCO will request the addition of these new projects to its supply portfolio in filings with the Indiana Utility Regulatory Commission (IURC) by year's end.

NIPSCO continues to expect \$1.8 to \$2.0 billion of renewable generation investments through 2023. Including these additional three joint venture projects, NIPSCO currently has executed agreements representing approximately \$1.25 billion of this anticipated investment.

These new renewable projects are consistent with NIPSCO's 2018 Integrated Resource Plan, which outlines plans to retire nearly 80% of its remaining coal-fired generation by 2023, and retire all coal generation by 2028, to be replaced by lower-cost, reliable and cleaner options. The plan is expected to drive a 90% reduction in NiSource's greenhouse gas emissions by 2030 compared with 2005 levels, and is expected to save NIPSCO electric customers more than \$4 billion over 30 years.

### **Progress on System Safety Enhancements**

NiSource is making progress on its safety initiatives across the gas and electric businesses, including its accelerated Safety Management System (SMS) implementation. SMS is a comprehensive approach to managing safety, emphasizing continual assessment and improvement as well as pro-actively identifying and mitigating potential risks.

Some 2020 highlights through the third quarter include:

- Continued deployment of our upgraded service line maps and records, with significant progress made in Kentucky, Pennsylvania and Virginia and tracking to achieve this milestone in all states by the end of the year.

- Regulatory approval in Ohio for a pilot of advanced mobile leak detection technology to perform quality assurance in our construction work.
- Continued installation of automatic shutoff devices on its gas distribution system, with work completed in Maryland, Kentucky and Virginia.

### **Columbia Gas of Massachusetts Sale Completed**

NiSource and Eversource received regulatory approval of the Columbia Gas of Massachusetts transaction on October 7, 2020 and the sale closed on October 9, 2020. The Massachusetts Department of Public Utilities (DPU) also approved a settlement with the Attorney General's Office and the Department of Energy Resources of all remaining state investigations related to the 2018 Greater Lawrence event, including the DPU's investigations on pipeline safety and emergency response.

### **Ongoing COVID-19 Response**

NiSource and its Columbia Gas and NIPSCO operating companies remain focused on employee and customer safety and providing reliable utility service through the COVID-19 pandemic. The companies are guided by the health and safety protocols recommended by the Centers for Disease Control and Prevention, federal, state and local governments, and have taken a number of additional actions to help customers through the pandemic, including offering flexible payment plans to customers impacted by or facing hardship due to COVID-19.

In line with the company's base case scenario, NiSource continues to see modest commercial and industrial load impacts due to COVID-19, which are partially offset by increases in residential load. Cost management measures have been implemented to mitigate these negative impacts on revenues. The company expects to continue to manage these impacts and update investors in future quarters.

### **Third Quarter 2020 and Recent Business Highlights**

#### **Gas Distribution Operations**

- **Columbia Gas of Pennsylvania's** base rate case remains pending before the Pennsylvania Public Utility Commission. The request, filed April 24, 2020, seeks an annual revenue increase of \$100.4 million to invest in, modernize and upgrade the company's existing natural gas distribution system as well as maintain the continued safety of the system. An order is expected in the first quarter of 2021, with new rates effective in January 2021.
- **Columbia Gas of Maryland** has reached a settlement with parties to the base rate case request it filed in May 2020. The settlement supports further upgrading and replacement of the company's underground natural gas pipelines and provides for an annual revenue increase of \$3.3 million, including \$1.3 million of current tracker revenue, if approved as filed. An order from the Maryland Public Service Commission is expected in November 2020, with new rates effective in December 2020.
- On August 25, 2020, **NIPSCO** filed its latest tracker update request in its long-term gas modernization program, covering \$26 million in incremental capital investments made between January 2020 and June 2020. An IURC order is expected by the end of the year, with new rates effective in January 2021. The IURC on July 22, 2020, approved a six-year extension of the program, which includes nearly \$950 million in capital investments through 2025, to be recovered through semi-annual adjustments to the existing gas **Transmission,**

**Distribution and Storage Improvement Charge (TDSIC) tracker.**

- The Public Utilities Commission of Ohio (PUCO) in August 2020 approved **Columbia Gas of Ohio's** annual **Capital Expenditure Program (CEP)** tracker adjustment, and new rates became effective in September 2020. The CEP tracker allows the company to recover capital investments and related deferred expenses that are not recovered through its Infrastructure Replacement Program. The order allows Columbia Gas to begin recovery of approximately \$185.1 million in capital invested in the CEP in 2019.

## **Electric Operations**

- NIPSCO's applications for approval of **two purchase power agreements with NextEra Energy**, which will build projects with a combined nameplate solar capacity of 300 megawatts and 30 megawatts of storage, remain pending before the IURC.
- Construction continues on both the **Rosewater** and **Jordan Creek** wind projects, which are expected to be in service by the end of this year. Construction has begun on the **Indiana Crossroads** wind project which is expected to go into service in 2021.

**Additional information for the quarter ended September 30, 2020, is available on the Investors section of [www.nisource.com](http://www.nisource.com), including segment and financial information and our presentation to be discussed at the company's third quarter 2020 earnings conference call scheduled for November 2, 2020 at 11:00 a.m. ET.**

## **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 7,500 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve. NiSource is a member of the Dow Jones Sustainability - North America Index and the Bloomberg Gender Equality Index and has been named by *Forbes* magazine among America's Best Large Employers since 2016. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found at [www.nisource.com](http://www.nisource.com). Follow us at [www.facebook.com/nisource](https://www.facebook.com/nisource), [www.linkedin.com/company/nisource](https://www.linkedin.com/company/nisource) or [www.twitter.com/nisourceinc](https://www.twitter.com/nisourceinc). NI-F

## **Forward-Looking Statements**

This press release contains "forward-looking statements" within the meaning of federal securities laws. Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially. Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include among other things, our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; our ability to execute our growth strategy; changes in general economic, capital and commodity market conditions; pension funding obligations; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; our

ability to adapt to, and manage costs related to, advances in technology; any changes in our assumptions regarding the financial implications of the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; potential incidents and other operating risks associated with our business; continuing and potential future impacts of from the COVID-19 pandemic ; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; any damage to our reputation, including in connection with the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; fluctuations in demand from residential, commercial and industrial customers; economic conditions of certain industries; the success of NIPSCO's electric generation strategy; the price of energy commodities and related transportation costs; the reliability of customers and suppliers to fulfill their payment and contractual obligations; potential impairments of goodwill or definite-lived intangible assets; changes in taxation and accounting principles; the impact of an aging infrastructure; the impact of climate change; potential cyber-attacks; construction risks and natural gas costs and supply risks; extreme weather conditions; the attraction and retention of a qualified workforce; the ability of our subsidiaries to generate cash; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; and other matters in the "Risk Factors" section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as updated in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and our subsequent SEC filings. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time. A credit rating is not a recommendation to buy, sell or hold securities, and may be subject to revision or withdrawal at any time by the assigning rating organization. In addition, dividends are subject to board approval.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

### **Regulation G Disclosure Statement**

This press release includes financial results and guidance for NiSource with respect to net operating earnings available to common shareholders, which is a non-GAAP financial measure as defined by the SEC's Regulation G. The company includes this measure because management believes it permits investors to view the company's performance using the same tools that management uses and to better evaluate the company's ongoing business performance. With respect to such guidance, it should be noted that there will likely be a difference between this measure and its GAAP equivalent due to various factors, including, but not limited to, fluctuations in weather, the impact of asset sales and impairments, and other items included in GAAP results. The company is not able to estimate the impact of such factors on GAAP earnings and, as such, is not providing earnings guidance on a GAAP basis.

Schedule 1 - Reconciliation of Consolidated Net Income (Loss) Available to Common Shareholders to Net Operating Earnings (Loss) Available to Common Shareholders (Non-GAAP) *(unaudited)*

<i>(in millions, except per share amounts)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>GAAP Net Income (Loss) Available to Common Shareholders</b>	\$ (186.7)	\$ (7.2)	\$ (143.4)	\$ 481.0
<b>Adjustments to Operating Income:</b>				
<b>Operating Revenues:</b>				
Weather - compared to normal	(5.2)	(3.6)	16.0	(13.0)
<b>Operating Expenses:</b>				
Greater Lawrence Incident <sup>(1)</sup>	2.3	20.5	15.4	(179.4)
Loss on classification as held for sale <sup>(2)</sup>	35.6	—	400.2	—
Plant retirement costs <sup>(3)</sup>	—	—	4.6	—
Massachusetts Business separation costs <sup>(4)</sup>	11.1	—	16.3	—
Massachusetts Business depreciation and amortization <sup>(5)</sup>	(15.2)	—	(35.1)	—
NiSource Next initiative <sup>(6)</sup>	26.6	—	26.6	—
Loss (gain) on sale of fixed assets and impairments, net	0.3	(0.2)	(0.4)	(0.1)
Total adjustments to operating income (loss)	55.5	16.7	443.6	(192.5)
<b>Other Income (Deductions):</b>				
Loss on early extinguishment of long-term debt <sup>(7)</sup>	243.4	—	243.4	—
<b>Income Taxes:</b>				
Tax effect of above items <sup>(8)</sup>	(75.9)	(11.2)	(166.2)	36.6
Total adjustments to net income (loss)	223.0	5.5	520.8	(155.9)
<b>Net Operating Earnings (Loss) Available to Common Shareholders (Non-GAAP)</b>	\$ 36.3	\$ (1.7)	\$ 377.4	\$ 325.1
<b>Basic Average Common Shares Outstanding</b>	383.8	374.1	383.5	373.8
<b>GAAP Basic Earnings (Loss) Per Share</b>	\$ (0.49)	\$ (0.02)	\$ (0.37)	\$ 1.29
Adjustments to basic earnings (loss) per share	0.58	0.02	1.35	(0.42)
<b>Non-GAAP Basic Net Operating Earnings Per Share</b>	\$ 0.09	\$ —	\$ 0.98	\$ 0.87

<sup>(1)</sup>Represents costs incurred for estimated third-party claims and related other expenses as a result of the Greater Lawrence Incident, net of insurance recoveries recorded.

<sup>(2)</sup>Represents loss recorded as a result of measuring the assets and liabilities of the Massachusetts Business at fair value, less costs to sell. Third quarter increase primarily includes approximately \$36 million of capital expenditures that were not recouped through the sale of the Massachusetts Business that occurred on October 9, 2020.

<sup>(3)</sup>Represents costs incurred in connection with the planned retirement of the Schahfer Generating Station. Includes costs for write downs of certain capital projects and materials and supplies inventory balances.

<sup>(4)</sup>Represents third-party consulting costs incurred for the separation and transition of the Massachusetts Business to Eversource that occurred on October 9, 2020.

<sup>(5)</sup>Represents depreciation and amortization expense that was ceased for GAAP purposes as a result of classifying the Massachusetts Business as held for sale.

<sup>(6)</sup>Represents costs incurred in connection with the NiSource Next initiative. Includes costs for severance and third-party consulting.

<sup>(7)</sup>Represents non-recurring costs incurred for the early redemption of \$1,603.6 million in long-term notes, consisting primarily of early redemption premiums.

<sup>(8)</sup>For the three and nine months ended September 30, 2020, represents the tax effect of the adjustments to operating income at statutory tax rates, adjusted for the non-deductible CMA payment in lieu of penalties in 2020. For the three and nine months ended September 30, 2019, represents the tax effect of the adjustments to operating income at the adjusted effective tax rate and adjusted for favorable excess deferred income taxes related to TCJA included in GAAP results.

Schedule 2 - Total Current Estimated Amounts of Costs and Expenses Related to the Greater Lawrence Incident

Cost or Expense	Total Current Estimated Amount <sup>(1)</sup> (\$ in millions)
Capital Cost <sup>(2)</sup>	\$258
Incident Related Expenses	
Third-party claims and government fines, penalties and settlements <sup>(3)</sup>	\$1,036 - \$1,050
Other incident-related costs <sup>(4)</sup>	\$445 - \$455
Insurance Recoveries <sup>(5)</sup>	\$800

<sup>(1)</sup>Total estimated amount includes costs or expenses from the incident through September 30, 2020 and estimated expected expenses in future periods in the aggregate. Amounts shown are estimates made by management based on currently available information. See the footnotes below for additional information. Actual results may differ materially from these estimates as more information becomes available.

<sup>(2)</sup>We have invested approximately \$258 million of capital spend for the pipeline replacement. This work was completed in 2019. We maintain property insurance for gas pipelines and other applicable property. Columbia Gas of Massachusetts has filed a proof of loss with its property insurer for the pipeline replacement. In January 2020, we filed a lawsuit against the property insurer, seeking payment of our property claim. We are currently unable to predict the timing or amount of any insurance recovery under the property policy. This pipeline replacement cost is part of the Massachusetts Business that was classified as held for sale at September 30, 2020. The assets and liabilities of the Massachusetts Business have been recorded at fair value, less costs to sell, which resulted in the loss on classification as held for sale that was recorded as of September 30, 2020. The sale of the Massachusetts Business was completed on October 9, 2020.

<sup>(3)</sup> Amount includes approximately \$1,036 million of expenses recorded since the Greater Lawrence Incident for estimated third-party claims and fines, penalties and settlements associated with government investigations. With regard to third-party claims, these costs include, but are not limited to, personal injury and property damage claims, damage to infrastructure, business interruption claims, and mutual aid payments to other utilities assisting with the restoration effort. These costs do not include costs of certain third-party claims and fines, penalties or settlements with government investigations that we are not able to estimate. The process for estimating costs associated with third-party claims relating to the Greater Lawrence Incident requires management to exercise significant judgment based on a number of assumptions and subjective factors. As more information becomes known, management's estimates and assumptions regarding the financial impact of the Greater Lawrence Incident may change.

<sup>(4)</sup> Amount shown includes other incident related expenses of approximately \$441 million recorded since the Greater Lawrence Incident. Amount represents certain consulting costs, legal costs, vendor costs, claims center costs, labor and related expenses incurred in connection with the incident, and insurance-related loss surcharges.

<sup>(5)</sup> The aggregate amount of third-party liability insurance coverage available for losses arising from the Greater Lawrence Incident is \$800 million. We have collected the entire \$800 million. Expenses related to the incident have exceeded the total amount of insurance available under our policies.

**FORM 8-K**

**OCTOBER 19, 2020**

**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): October 19, 2020**

**NiSource Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
Commission  
File Number

**35-2108964**  
(I.R.S. Employer  
Identification No.)

**801 East 86th Avenue**  
**Merrillville, IN**  
(Address of principal executive offices)

**46410**  
(Zip Code)

**Registrant's telephone number, including area code (877) 647-5990**

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:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
<b>Common Stock, par value \$0.01 per share</b>	<b>NI</b>	<b>NYSE</b>
<b>Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share</b>	<b>NI PR B</b>	<b>NYSE</b>

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

Emerging growth company

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



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**Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

As previously disclosed by NiSource Inc. (the “Company”), the Company and Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA”) sold substantially all of the assets of CMA and certain related assets to Eversource Energy, with the transaction closing on October 9, 2020 (the “Closing”).

In connection with the Closing, Carrie J. Hightman, the Company’s Executive Vice President and Chief Legal Officer, and Chief Executive Officer, CMA, stepped down from her role as Chief Executive Officer, CMA. In addition, on October 19, 2020, it was agreed that Ms. Hightman will be departing the Company on January 29, 2021, and her position overseeing the legal function and directing federal government affairs will be eliminated as of such date. Anne-Marie W. D’Angelo, the Company’s Senior Vice President, General Counsel and Corporate Secretary, will be in charge of the legal function and will serve as an executive vice president reporting to Joseph Hamrock, the Company’s President and Chief Executive Officer, effective January 30, 2021. Ms. Hightman’s responsibilities with respect to directing federal government affairs will be transitioned to the utilities organization upon her departure.

The Company thanks Ms. Hightman for her many years of leadership and service, including her key role with respect to the CMA transaction and the Closing.

Due to the elimination of her position, Ms. Hightman will be eligible to receive benefits upon her departure under the NiSource Inc. Executive Severance Policy, the terms of which are consistent with the executive severance terms described in the Company’s Proxy Statement filed with the Securities and Exchange Commission on April 13, 2020.

A copy of the Company’s press release announcing the pending departure of Ms. Hightman is attached hereto as Exhibit 99.1, and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	<a href="#">NiSource Inc. Press Release dated October 23, 2020</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

NiSource Inc.

\_\_\_\_\_  
(Registrant)

Date: October 23, 2020

By:         /s/ Anne-Marie W. D'Angelo        

Anne-Marie W. D'Angelo

Senior Vice President, General Counsel and Corporate Secretary

Exhibit 99.1



October 23, 2020

**FOR ADDITIONAL INFORMATION**

**Media**

Ken Stammen  
Corporate Media Relations  
(614) 460-5544  
kstammen@nisource.com

**Investors**

Nick Drew  
Director, Investor Relations  
(614) 460-4638  
ndrew@nisource.com

Sara Macioch  
Manager, Investor Relations  
(614) 460-4789  
smacioch@nisource.com

**NiSource Announces Leadership Changes in Legal  
and Federal Government Affairs**

MERRILLVILLE, Ind. – NiSource (NYSE: NI) announced today that following the closing of the sale of Columbia Gas of Massachusetts (CMA) to Eversource, Carrie Hightman, executive vice president, chief legal officer, NiSource and CEO and president of CMA, stepped down from her CMA roles. In addition, Hightman will be leaving NiSource in January 2021, and her position overseeing Legal and Federal Government Affairs will be eliminated.

“The Board of Directors and I are deeply grateful for Carrie’s leadership and exceptional legal counsel throughout her 13 years at NiSource. Carrie’s impact has been immeasurable, most recently having successfully led the transition of CMA to Eversource, and also through her elevation of the Legal and Federal Government Affairs functions. All of us at NiSource and our operating companies wish her well in retirement,” said Joe Hamrock, president and CEO of NiSource.

Anne-Marie D’Angelo, who joined the company in September, 2019 and who is serving as senior vice president, general counsel and corporate secretary, will become an executive vice president and a member of the company’s executive leadership team, effective January 30, 2021 and will lead NiSource’s legal function, reporting to Joe Hamrock. Responsibility for Federal Government Affairs, which currently reports to Hightman, will transition to the Utilities organization upon Hightman’s departure.

“Anne-Marie has demonstrated the highest levels of integrity, judgment and leadership since she joined NiSource, and she is well positioned to lead our team of talented and well respected attorneys and contribute substantially as a member of NiSource’s executive leadership team,” Hamrock concluded.

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**About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.2 million natural gas customers and 500,000 electric customers across six states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 7,500 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve. NiSource is a member of the Dow Jones Sustainability - North America Index and the Bloomberg Gender Equality Index and has been named by *Forbes* magazine among America's Best Large Employers since 2016. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found at [www.nisource.com](http://www.nisource.com). Follow us at [www.facebook.com/nisource](https://www.facebook.com/nisource), [www.linkedin.com/company/nisource](https://www.linkedin.com/company/nisource) or [www.twitter.com/nisourceinc](https://www.twitter.com/nisourceinc). NI-F

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**FORM 8-K**  
**OCTOBER 9, 2020**

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

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**FORM 8-K**

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**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): October 9, 2020**

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**NiSource Inc.**

(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
(Commission  
file number)

**35-2108964**  
(I.R.S. Employer  
Identification No.)

**801 East 86th Avenue**  
**Merrillville, Indiana**  
(Address of Principal Executive Offices)

**46410**  
(Zip Code)

**Registrant's telephone number, including area code: (877) 647-5990**

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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:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
<b>Common Stock, par value \$0.01 per share</b>	<b>NI</b>	<b>New York Stock Exchange</b>
<b>Depositary Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share</b>	<b>NI PR B</b>	<b>New York Stock Exchange</b>

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

Emerging growth company

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

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**Item 8.01. Other Events.**

As previously announced, on February 26, 2020, NiSource Inc. (“NiSource”) and Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“Columbia of Massachusetts”) (together with NiSource, “Seller”) entered into an asset purchase agreement (the “Asset Purchase Agreement”) with Eversource Energy, a Massachusetts voluntary association (“Buyer”). The Asset Purchase Agreement was described in NiSource’s current report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on February 27, 2020. On October 9, 2020, Buyer and Seller consummated the transactions contemplated by the Asset Purchase Agreement.

As previously disclosed, on July 2, 2020, Buyer, Seller and Eversource Gas Company of Massachusetts, a wholly-owned subsidiary of Seller (“EGMA”), filed with the Massachusetts Department of Public Utilities (“DPU”) a joint petition for the approval of the transaction as contemplated by the Asset Purchase Agreement and a proposed multi-year rate plan. The petition sought approval of a settlement agreement executed on July 2, 2020 (the “Settlement Agreement”) among, Buyer, Seller, EGMA, the Massachusetts Attorney General’s Office, the Massachusetts Department of Energy Resources and the Low-Income Weatherization and Fuel Assistance Program Network. The Settlement Agreement was conditioned on its approval by the DPU no later than September 30, 2020; however, this deadline was extended to October 7, 2020. The Settlement Agreement was approved by the DPU on October 7, 2020. A description of the terms of the Settlement Agreement was included in NiSource’s current report on Form 8-K filed with SEC on July 6, 2020.

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**SIGNATURES**

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

**NISOURCE INC.**

October 9, 2020

By: /s/ Anne-Marie W. D'Angelo  
Anne-Marie W. D'Angelo  
Senior Vice President, General Counsel and Corporate Secretary



**FORM 8-K**

**SEPTEMBER 29, 2020**

**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): September 29, 2020**

**NiSource Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
(Commission  
file number)

**35-2108964**  
(I.R.S. Employer  
Identification No.)

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**46410**  
(Zip Code)

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<b>Common Stock, par value \$0.01 per share</b>	<b>NI</b>	<b>New York Stock Exchange</b>
<b>Depositary Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share</b>	<b>NI PR B</b>	<b>New York Stock Exchange</b>

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

Emerging growth company

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

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**Item 7.01. Regulation FD Disclosure.**

On September 29, 2020, NiSource Inc. (the “Company”) issued a press release and posted a presentation on its website to provide information regarding the Company’s long-term growth strategy in connection with the Company’s hosting of a virtual Investor Day on such date. Copies of the press release and the presentation are furnished as exhibits to this report.

The information furnished in this Item 7.01 (including Exhibits 99.1 and 99.2) shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and is not incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
99.1	<a href="#">NiSource Inc. Press Release dated September 29, 2020</a>
99.2	<a href="#">NiSource Inc. Presentation dated September 29, 2020</a>
104	Cover Page Interactive File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

**NISOURCE INC.**

September 29, 2020

By: /s/ Donald E. Brown

Donald E. Brown

Executive Vice President and Chief Financial Officer

Exhibit 99.1



September 29, 2020

**FOR ADDITIONAL INFORMATION**

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**NiSource Outlines Progress on Long-term Growth Strategy at Virtual Investor Day**

- \$40 billion in expected infrastructure investment opportunities over 20 years, an increase of \$10 billion over prior expectations
- Expected rate base CAGR of 10% – 12% and NOEPS CAGR of 7% – 9% over 2021 – 2024
- NiSource Next program to accelerate enhancements to capabilities and cost structure

**MERRILLVILLE, Ind.** – NiSource Inc. (NYSE: NI) will host a virtual investor day this morning where the company will discuss its long-term growth strategy, including key initiatives focused on investments in safety, asset modernization and renewable generation as well as cost structure refinements and capabilities enhancements. Details of its financial outlook and balanced financing plan that supports the company’s strategy will also be presented.

“We are at a key stage in the execution of our strategy to deliver on our long-term value proposition, building on a number of strategic actions we have taken to drive these efforts,” said NiSource President and CEO Joe Hamrock. “We have made significant progress in 2020 and continue to execute with a relentless focus on safety and customer affordability. In recent years, we have accelerated implementation of our safety management system (SMS), realigned our executive leadership and integrated key operations across the organization, enhanced oversight and guidance on the Quality Review Board and NiSource Board of Directors, advanced a series of renewable energy projects and are on track to complete the sale of Columbia Gas of Massachusetts (CMA). By leveraging our platform, dedicated investment approach and relentless commitment to safety, we are delivering benefits for our customers and communities and meaningfully enhancing NiSource’s earnings power over time.”

**Strong Financial Foundation for Value Creation**

NiSource has a strong, sustainable growth platform with supportive fundamentals and nearly \$14 billion of regulated rate base, following the sale of CMA. NiSource’s core business strategy is expected to drive long-term revenue and dividend growth, supported by stable, rate base driven revenue streams and approximately \$40 billion in expected infrastructure investment opportunities over 20 years. These investment opportunities represent an increase of \$10 billion over prior expectations, driven by incremental investments in renewable generation and safety and asset modernization enhancements across both gas and electric operations which total \$9.9 – \$10.5 billion of capital investment opportunities during the 2021 – 2024 plan period.

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At Investor Day, NiSource will discuss its recently launched NiSource Next initiative, a comprehensive program designed to identify long-term, sustainable capability enhancements and cost efficiency improvements. Through this program, the company anticipates driving continuous operational learnings and improvements throughout the organization, while also contributing to an approximately 8% reduction in O&M costs in 2021 from expected 2020 levels. This cost reduction is expected to offset future inflationary pressure to keep O&M costs relatively flat through 2024 and ensure customers realize the value of the company's enhanced capabilities.

Execution of NiSource's strategy is expected to drive a rate base compound annual growth rate (CAGR) of 10% – 12%, which is expected to result in a 7% – 9% NOEPS CAGR, and annual dividend growth to maintain the company's targeted 60% – 70% payout ratio over 2021 – 2024. Through the execution of a strong rate base growth strategy while focusing on safety enhancing capital deployment, and executing NiSource Next, customer affordability is preserved throughout the planning horizon.

#### **Growth Driven by Safety, Risk Mitigation and Customer Service**

NiSource continues to prioritize its safety initiatives across its gas and electric businesses, including its SMS implementation, which improves and drives robust operating standards, risk identification and mitigation capabilities. The company's \$1.9 – \$2.2 billion in planned annual capital investment in its growth, safety and asset modernization programs is enhancing NiSource's system safety and reliability while driving shareholder value. The company will also discuss how its NiSource Next program further supports the high priority NiSource places on safety, risk mitigation and customer service.

#### **Renewable Generation Transition Strategy Focused on Affordability and Sustainability**

NiSource continues to execute its renewable generation transition strategy that embraces the need for clean energy in supporting its customers and communities through its NIPSCO gas and electric distribution company in Indiana. The company is focused on retiring 100% of coal generation assets by 2028 and replacing them primarily with renewables.

As part of NIPSCO's planned replacement of approximately 1,400 megawatts of retiring coal-fired generation in 2023, NiSource has identified \$1.8 – \$2.0 billion in capital investment opportunities, incremental to our previous capital plan, to be deployed primarily across 2022 and 2023. These investments in renewable energy will provide benefits for customers and value for shareholders. The overall replacement plan is expected to save NIPSCO's electric customers more than \$4 billion in costs over 30 years when compared to the continued operation of NIPSCO's current generation fleet and to reduce greenhouse gas emissions 90 percent by 2030 compared to a 2005 baseline.

“Our approach across our portfolio is focused on driving affordability for our customers and sustainability for the communities we serve. It's important that we listen to our customers and pursue strategic investments that meet their evolving demands for more affordable, and cleaner energy resources,” said Hamrock.

#### **Today's Investor Day Presentation**

NiSource's Investor Day presentation will be webcast with accompanying presentations on [www.nisource.com](http://www.nisource.com) starting at 11:00 am ET and is expected to conclude by 1:00 pm ET. A replay of the webcast will be available on [www.nisource.com](http://www.nisource.com) beginning that evening.

#### **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.5 million natural gas customers and 500,000 electric customers across seven states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 8,400 employees are focused on safely delivering reliable and affordable

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energy to our customers and communities we serve. NiSource is a member of the Dow Jones Sustainability - North America Index and the Bloomberg Gender Equality Index and has been named by *Forbes* magazine among America's Best Large Employers since 2016. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found at [www.nisource.com](http://www.nisource.com). Follow us at [www.facebook.com/nisource](https://www.facebook.com/nisource), [www.linkedin.com/company/nisource](https://www.linkedin.com/company/nisource) or [www.twitter.com/nisourceinc](https://www.twitter.com/nisourceinc). NI-F

### **Forward-Looking Statements**

This press release contains "forward-looking statements" within the meaning of federal securities laws. Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially.

Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include among other things, our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; our ability to execute our growth strategy; changes in general economic, capital and commodity market conditions; pension funding obligations; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; our ability to adapt to, and manage costs related to, advances in technology; any changes in our assumptions regarding the financial implications of the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; the pending sale of the Columbia of Massachusetts business, including the terms and closing conditions under the related Asset Purchase Agreement; potential incidents and other operating risks associated with our business; potential impacts from the COVID-19 pandemic; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; any damage to our reputation, including in connection with the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; fluctuations in demand from residential and commercial customers; economic conditions of certain industries; the success of NIPSCO's electric generation strategy; the price of energy commodities and related transportation costs; the reliability of customers and suppliers to fulfill their payment and contractual obligations; potential impairments of goodwill or definite-lived intangible assets; changes in taxation and accounting principles; the impact of an aging infrastructure; the impact of climate change; potential cyber-attacks; construction risks and natural gas costs and supply risks; extreme weather conditions; the attraction and retention of a qualified workforce; the ability of our subsidiaries to generate cash; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; and other matters in the "Risk Factors" section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as updated in our Quarterly Report on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020 and in our subsequent SEC filings, many of such risks are beyond our control. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time. All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

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**Regulation G Disclosure Statement**

This press release includes financial results and guidance for NiSource with respect to net operating earnings available to common shareholders, which is a non-GAAP financial measure as defined by the SEC's Regulation G. The company includes this measure because management believes it permits investors to view the company's performance using the same tools that management uses and to better evaluate the company's ongoing business performance. With respect to such guidance, it should be noted that there will likely be a difference between this measure and its GAAP equivalent due to various factors, including, but not limited to, fluctuations in weather, the impact of asset sales and impairments, and other items included in GAAP results. NiSource is not able to estimate the impact of such factors on GAAP earnings and, as such, is not providing earnings guidance on a GAAP basis.

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Exhibit 99.2

# Investor Day

September 29, 2020



## FORWARD-LOOKING STATEMENTS

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Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this presentation include among other things, our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; our ability to execute our growth strategy; changes in general economic, capital and commodity market conditions; pension funding obligations; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; our ability to adapt to, and manage costs related to, advances in technology; any changes in our assumptions regarding the financial implications of the Greater Lawrence Incident; compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; the pending sale of the Columbia of Massachusetts business, including the terms and closing conditions under the related Asset Purchase Agreement; potential incidents and other operating risks associated with our business; potential impacts from the COVID-19 pandemic; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; any damage to our reputation, including in connection with the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; fluctuations in demand from residential and commercial customers; economic conditions of certain industries; the success of NIPSCO's electric generation strategy; the price of energy commodities and related transportation costs; the reliability of customers and suppliers to fulfill their payment and contractual obligations; potential impairments of goodwill or definite-lived intangible assets; changes in taxation and accounting principles; the impact of an aging infrastructure; the impact of climate change; potential cyber-attacks; construction risks and natural gas costs and supply risks; extreme weather conditions; the attraction and retention of a qualified workforce; the ability of our subsidiaries to generate cash; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; and other matters in the "Risk Factors" section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as updated in our Quarterly Report on Form 10-Q for the quarters ended March 31, 2020 and June 30, 2020 and in our subsequent SEC filings, many of such risks are beyond our control. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time. All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

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## AGENDA

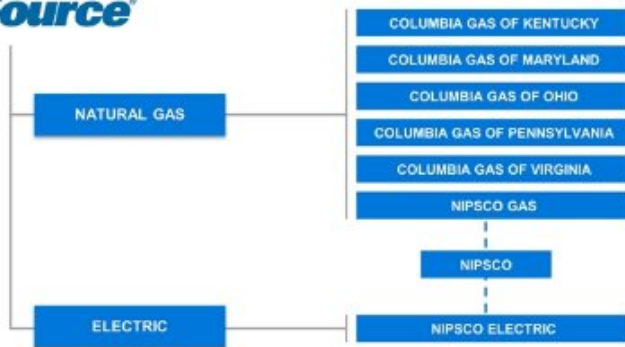
1	WELCOME Randy Hulen	5	FINANCIAL OVERVIEW Donald Brown
2	STRATEGIC OVERVIEW Joe Hamrock	6	CLOSING Joe Hamrock
3	OPERATIONS & SAFETY FOCUS Pablo Vegas	7	Q&A
4	GENERATION TRANSITION Shawn Anderson		

# Strategic Overview

Joe Hamrock  
President, Chief Executive Officer & Director, NiSource



## PREMIER REGULATED UTILITY BUSINESS



Significant Scale  
across Six States

~3.2M  
Gas Customers

~500K  
Electric Customers

NI  
LISTED  
NYSE

10%–12%  
Compelling expected  
annual total  
shareholder return  
proposition 2021-2024\*

\* Estimated total shareholder return at a constant P/E ratio  
Note: Structure is post sale of Columbia Gas of Massachusetts, which is expected to close in October 2020

## THE U.S. REGULATED UTILITY INVESTMENT OF CHOICE

Safety and environmental leadership will continue to drive customer value and sustainable growth

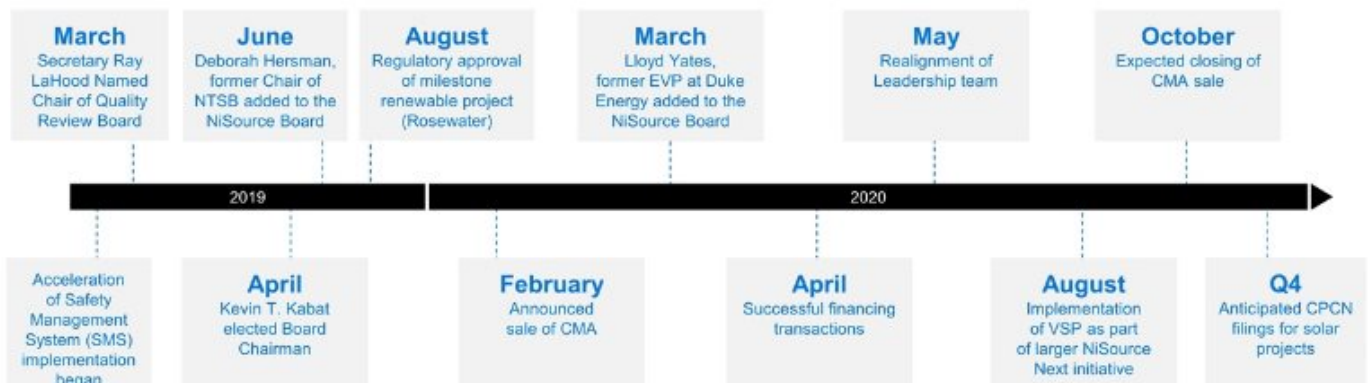
<b>Strong Foundation</b>	<b>Clear Path to Drive Incremental Growth</b>	<b>Benefiting Customers and Communities</b>	<b>Committed to Shareholder Value</b>
<ul style="list-style-type: none"> <li>Regulatory diversity resulting from multiple jurisdictions provides stability</li> <li>Significant scale, with ~\$14B of regulated electric and gas rate base<sup>1</sup></li> <li>Proximity to abundant, low-cost natural gas resources supports ongoing rate affordability</li> <li>Investments and recovery supported by favorable energy policies and constructive regulatory environments</li> </ul>	<ul style="list-style-type: none"> <li>Enhanced ~\$40B infrastructure investment opportunity set driving long-term growth               <ul style="list-style-type: none"> <li>Increase of ~\$10B from prior expectation</li> </ul> </li> <li>Well-established capital investment programs with track record of recovery through regulatory trackers</li> <li>Driving 10%-12% expected rate base CAGR 2021-2024</li> </ul>	<ul style="list-style-type: none"> <li>Accelerated and enhanced implementation of Safety Management System (SMS)</li> <li>Generation investments to save customers \$4B over 30 years and reduce GHG 90% by 2030<sup>2</sup></li> <li>Investments and focus on organizational efficiency to drive continued customer affordability</li> <li>Gas safety and modernization investments advancing environmental benefits</li> </ul>	<ul style="list-style-type: none"> <li>100% regulated revenue expected to deliver consistent and predictable earnings growth</li> <li>Expected 7%-9% NOEPS<sup>3</sup> CAGR 2021-2024</li> <li>Dividend growth to maintain targeted 60%-70% payout ratio</li> <li>Balanced financing plan focused on maintaining current investment grade credit ratings and maximizing NOEPS growth</li> </ul>

<sup>1</sup>2020E excludes CMA; <sup>2</sup>Compared to 2005 baseline; <sup>3</sup>Net Operating Earnings Per Share (Non-GAAP)

## COMMITMENT TO SAFETY AND A SUSTAINABLE STRATEGY FOR ALL STAKEHOLDERS

Significant ongoing process

- Realigned executive leadership and integrated key operations functions across the organization
- Accelerated implementation of our Safety Management System (SMS)
- Advancing renewable portfolio with first phase of wind projects expected to be in service by Q4 2020
- Enhanced oversight and guidance on the Quality Review Board and NiSource Board of Directors
- Pending sale of Columbia Gas of Massachusetts



## FOCUSED EXECUTIVE LEADERSHIP TEAM

Balanced senior roles and responsibilities support the execution of our long-term strategic priorities



**Joe Hamrock**

*President & CEO*



**Pablo Vegas**

*EVP/COO & President, NiSource Utilities*



**Donald Brown**

*EVP/CFO & President, NiSource Corporate Services*



**Violet Sistovaris**

*EVP & Chief Experience Officer*



**Shawn Anderson**

*Chief Strategy & Risk Officer*



**Carrie Hightman**

*EVP/CLO, & CEO & President, Columbia Gas of Massachusetts*



**Chuck Shafer**

*Chief Safety Officer*

Leadership enhancements further advance NiSource's focus on safety, service and value



## SKILLED AND INDEPENDENT BOARD OF DIRECTORS\*

Diversity of Board experience and expertise is well-aligned with NiSource strategy



**Peter J. Altabef**  
Age: 61  
Elected: 2017  
Occupation: Chairman & CEO, Unisys Corp.



**Theodore H. Bunting Jr.**  
Age: 61  
Elected: 2018  
Occupation: Retired Group Pres., Entergy Corp.



**Eric I. Butler**  
Age: 60  
Elected: 2017  
Occupation: Pres. & CEO, Aswani-Butler Associates



**Aristides S. Candris**  
Age: 69  
Elected: 2012  
Occupation: Retired Pres. & CEO, Westinghouse



**Wayne S. DeVeydt**  
Age: 50  
Elected: 2016  
Occupation: Executive Chair of Surgery Partners, Inc.



**Joe Hamrock**  
Age: 57  
Elected: 2015  
Occupation: Pres. & CEO, NiSource Inc.



**Deborah A. Henretta**  
Age: 59  
Elected: 2015  
Occupation: Partner G100 Companies



**Deborah A. P. Hersman**  
Age: 50  
Elected: 2019  
Occupation: Consultant Waymo, LLC



**Michael E. Jesanis**  
Age: 63  
Elected: 2008  
Occupation: Retired Pres. & CEO National Grid USA



**Kevin T. Kabat**  
Age: 63  
Elected: 2015  
Occupation: Independent Chairman of the Board, NiSource Inc.; Retired CEO of Fifth Third Bancorp



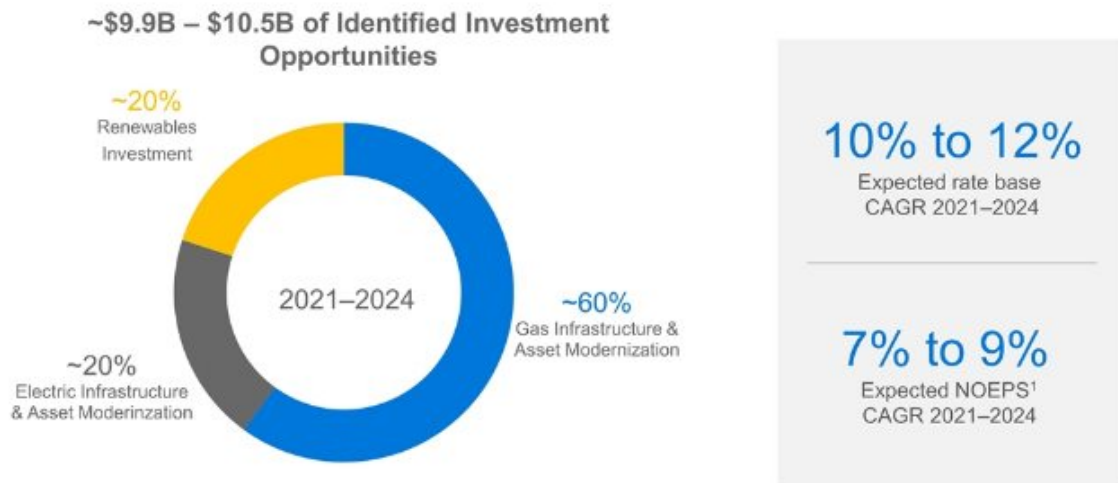
**Carolyn Y. Woo**  
Age: 66  
Elected: 1998  
Occupation: Retired Pres. & CEO, Catholic Relief Services



**Lloyd M. Yates**  
Age: 59  
Elected: 2020  
Occupation: Retired EVP, Duke Energy

\* All directors independent other than Joe Hamrock (CEO)

## CAPITAL PLAN RESULTING IN EXPECTED LASTING VALUE CREATION



<sup>1</sup>Net Operating Earnings Per Share (Non-GAAP)

## ACCELERATING OUR PATH FORWARD

Leveraging our platform through a dedicated investment approach and relentless commitment to safety



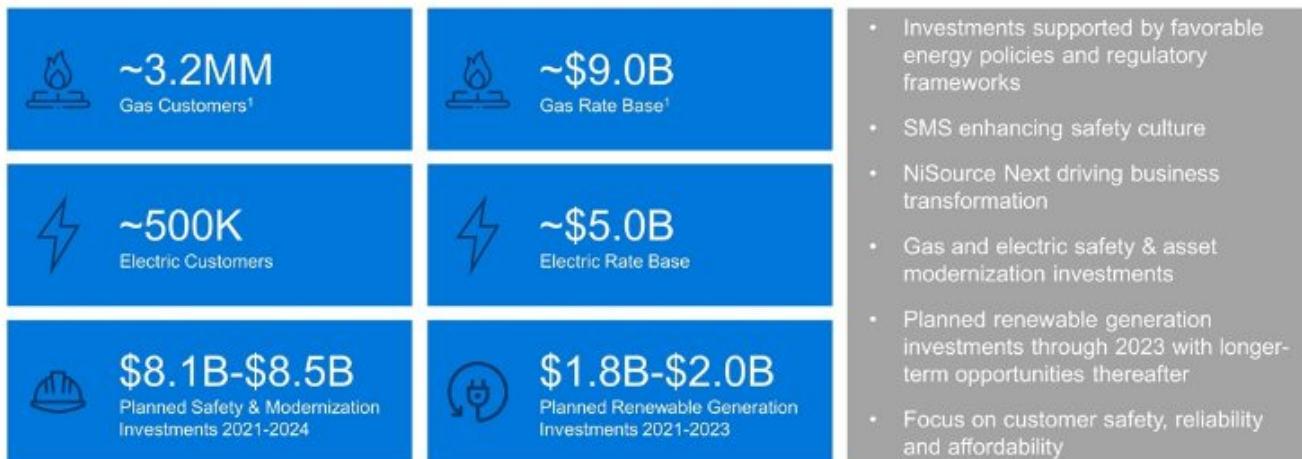
# Operations & Safety Focus

Pablo Vegas  
EVP/COO & President, NiSource Utilities



## NISOURCE OPERATIONS OVERVIEW

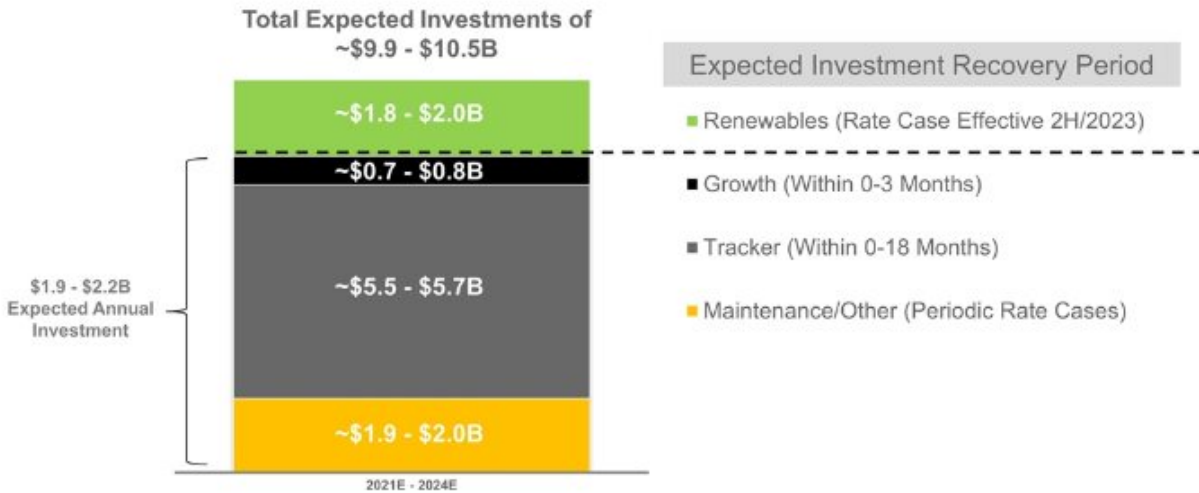
Energizing the lives of nearly four million customers



<sup>1</sup>Based on 2020E operations post the sale of Columbia Gas of Massachusetts, which is expected to close in October 2020

## CONTINUED INVESTMENT SUPPORTED BY REGULATORY FRAMEWORK

A significant part of our investment portfolio is preplanned, repeatable and tracked for recovery annually



Investment plan supported by established recovery mechanisms in all states that emphasize long-term rate affordability (targets annual rate impacts in the low-to-mid single digits)

**SMS ENHANCING SAFETY CULTURE (VIDEO)**

The logo for NiSource, featuring the word "NiSource" in a bold, blue, sans-serif font. The "Ni" is stylized with a sunburst or starburst pattern behind it. A registered trademark symbol (®) is located to the upper right of the word "Source".

**NiSource®**

## NISOURCE NEXT TRANSFORMATION

-  Unwavering Commitment to Safety Leadership
-  Achievable Annualized Run Rate Savings Targets
-  Flatter Organization, Stronger Teams, Empowered Leaders & Upskilled Employees
-  Seamless Customer Service Using Digital Capabilities
-  Standard Operations Management Supported by Modern Technology for Improved Speed and Reliability
-  Customer Trust and Investor Confidence

**NISOURCE NEXT**  
enhancing our ability to **achieve consistent, stable growth**, while fostering a culture of **leadership, innovation and commitment to continuous improvement by everyone within our organization**



## NATURAL GAS OPERATIONAL HIGHLIGHTS

Safely and sustainably operating in the communities we serve continues to be our highest priority

- Significant annual capital investment in natural gas safety and asset modernization programs planned through 2024
  - SMS continues to prioritize investment opportunities focused on system, public and employee safety improvement and risk reduction

### Gas Prioritized Investments

Bare steel & cast iron pipe replacement

Excess flow & automatic shutoff valves

Pipeline over pressurization protection

Inline pipeline inspection upgrades

Picarro advanced leak detection

### Projected Environmental Benefits

**50%** ←

Reduction in methane emissions from natural gas pipelines by 2025<sup>1</sup>

<sup>1</sup>Compared to 2005 baseline

## ELECTRIC BUSINESS OPERATIONAL HIGHLIGHTS

Delivering customer benefits, improving system reliability and embracing the need for affordable clean energy are driving growth in our electric business

- \$400-\$600 million of planned annual capital investment in base electric system infrastructure and asset modernization programs planned through 2024
- Incremental \$1.8-\$2.0 billion in planned generation investment opportunities through 2023
- Well-established and supported plan for electric generation enhances sustainability and diversification of business profile
  - Replacing approximately 1,400 megawatts of retiring coal-fired generation at Schahfer by 2023
  - Incremental opportunities beyond 2024 supporting planned Michigan City plant retirement
- Rate structure supports competitiveness of energy-intense industrial customers and reduces associated risks



## IMPROVING CUSTOMER EXPERIENCE, SATISFACTION AND AFFORDABILITY

- Operational safety and risk management systems driving technology investments to improve the customer experience
- “Know Your Home” campaign launched to better educate customers on their gas infrastructure
- Improved operational efficiency enabling us to become leaner and more efficient while providing more value for customers
- Introduced new payment platforms (PayPal, Venmo) to make bill payment easier
- Continuing payment assistance programs to help customers mitigate COVID-19

“Our customers are at the center of our business ...”



We are elevating our capabilities to better engage with our customers, with a strong ongoing focus on maintaining competitive and affordable rates

# Generation Transition Strategy

Shawn Anderson  
Chief Strategy & Risk Officer, NiSource



## GENERATION TRANSITION STRATEGY FOUNDATIONS

Charting the long-term course for transitioning our generation portfolio

### The IRP Process

- The Integrated Resource Plan (IRP) outlines NIPSCO long-term plans to supply electricity to customers
- IRP is required of all electric utilities in Indiana
- Takes into account interests of customers, employees, environment and local economy
- Process includes extensive analysis across a range of generation scenarios
- Broad stakeholder engagement is supported throughout process

### Key IRP Planning Considerations

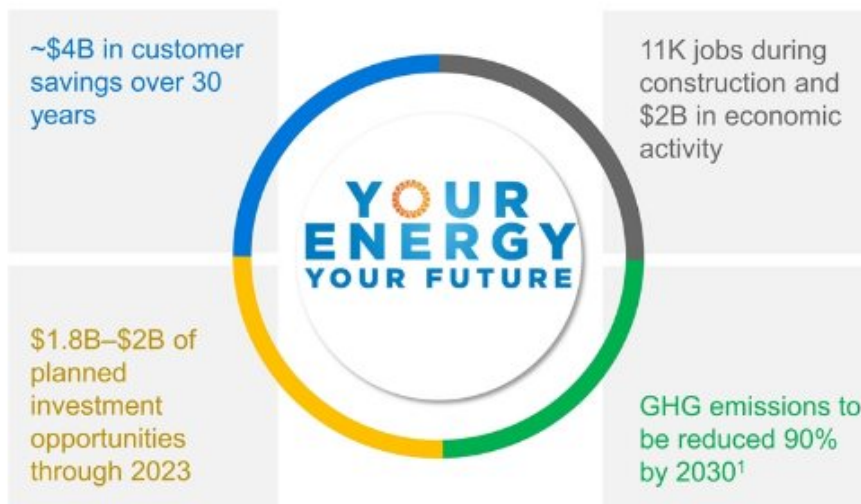


Process leads to generation replacement investment opportunities

## GENERATION TRANSITION OUTCOMES

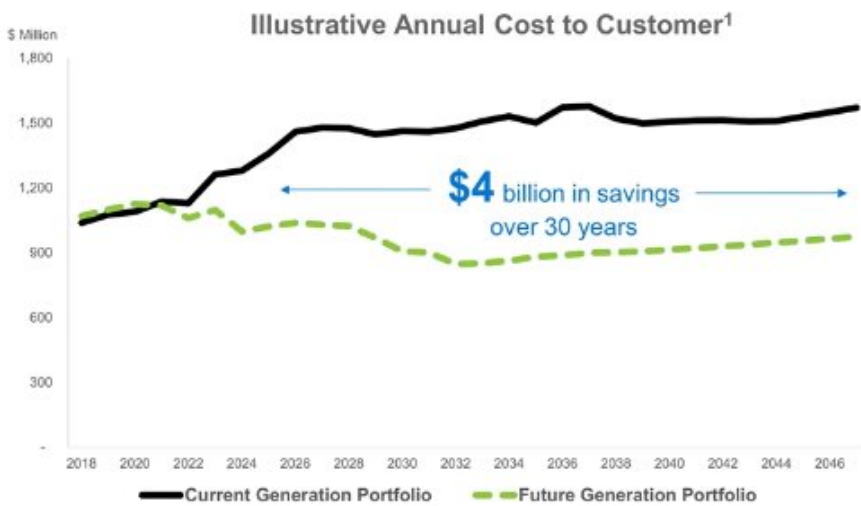
Replacing 80% of coal capacity by 2023 with primarily renewable resources; retiring all coal generation by 2028

### Estimated Impact from Generation Transition Plan



<sup>1</sup>Compared to 2005 baseline

## DRIVING CUSTOMER AND COMMUNITY BENEFITS



  
 \$105 in average annual savings per household<sup>2</sup>

  
 Renewable investments expected to benefit Indiana's economy

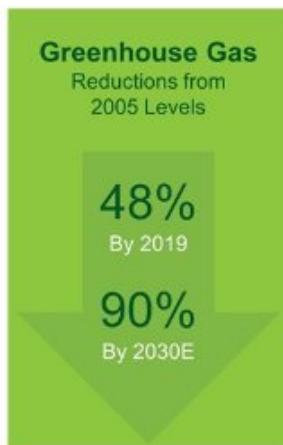
- Renewable generation infrastructure estimated to be \$5B-\$6B by 2023<sup>3</sup>
- ~11k in direct FTEs created during project construction
- ~\$2.3B of contribution to Indiana economic output (Gross State Product)
- Significant reinvestment in local tax base

<sup>1</sup>Reflects renewable investments through 2023 and potential considerations for Michigan City replacement  
<sup>2</sup>Based on average of 2013 - 2019 fuel costs  
<sup>3</sup>Includes JVs and PPAs

## DRIVING ENVIRONMENTAL BENEFITS

  
 Cleaner generation mix significantly reducing GHG emissions

  
 Driving down other environmental impacts related to coal

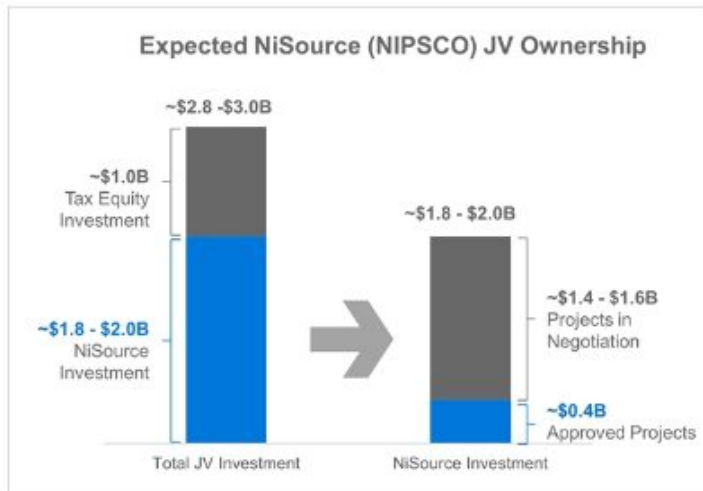
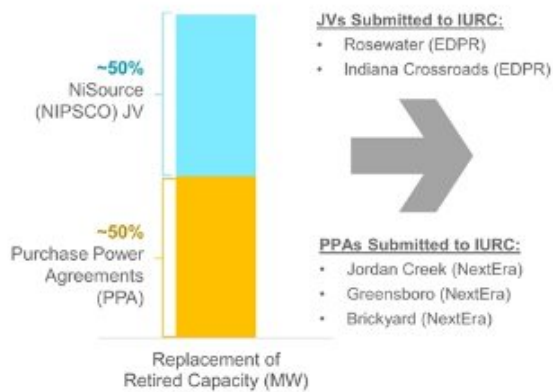


	Reduction 2005 to 2019	Reduction 2005 to 2030E
Nitrogen Oxides (tons)	84%	~100%
Sulfur Dioxide (tons)	97%	~100%
Mercury (pounds)	94%	99%
Water Withdrawal (millions gallons)	89%	99%
Water Discharge (millions gallons)	93%	99%
Coal Ash Generated (tons)	52%	100%



## \$1.8 - \$2.0 BILLION IN PLANNED INVESTMENTS THROUGH 2023

Tax equity partnerships allow for significant reduction in cost to customers and efficient timing of capital deployment



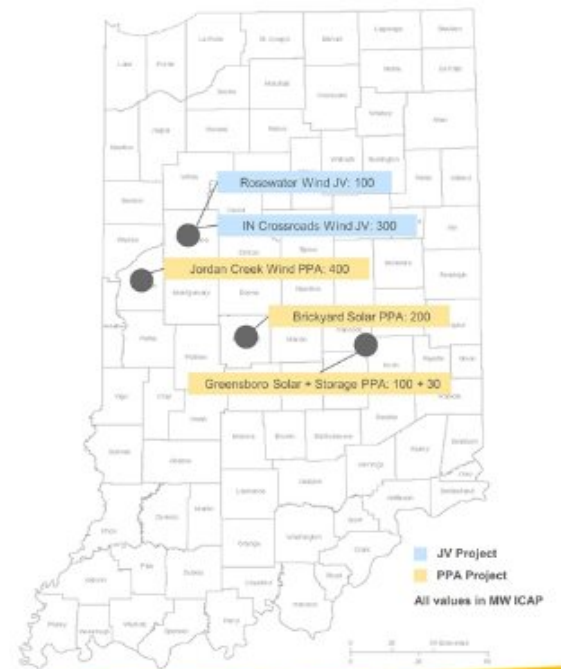
Mix of JVs and PPAs Drives Customer Benefits and Shareholder Value

## ROBUST RENEWABLE INVESTMENTS IN INDIANA

Project	Structure	NIPSCO Investment (\$M)	In Service	Status
<b>Executed Projects:</b>				
Rosewater Wind (EDPR)	JV	~\$100	'20	Under Construction
Jordan Creek Wind (NextEra)	PPA	N/A	'20	Under Construction
Indiana Crossroads Wind (EDPR)	JV	~\$300	'21	Under Construction
Brickyard Solar (NextEra)	PPA	N/A	'22	Pending Approval
Greensboro Solar + Storage (NextEra)	PPA	N/A	'22	Pending Approval
<b>In Process Projects:</b>				
Solar (+ Storage) Projects <sup>1</sup>	JV	~\$1,400 – \$1,600	'22-'23	Advanced Commercial Negotiations
Solar & Wind Projects	PPA	N/A	'23	Advanced Commercial Negotiations
<b>Total</b>		<b>\$1,800 – \$2,000</b>		

<sup>1</sup>Includes transmission projects included in IRP which will be fully owned by NIPSCO

Renewable Projects in Execution



## ANNOUNCED RENEWABLE PROJECT UPDATES

All renewable projects are on time and on budget



Approximately eight to ten additional projects in advanced commercial negotiations

## CASE STUDY: ROSEWATER WIND JOINT VENTURE



### Project Profile

- 100 MW wind project in White County
- 20 Vestas V136 3.6 MW wind turbines
- 5 Vestas V150 4.2 MW wind turbines
- Substation and transmission lines

### Tax Equity Structure

- Tax equity partner (Wells Fargo) funding ~55% of \$170M project cost with an estimated flip date of 2030

### Expected Rate Base Contribution

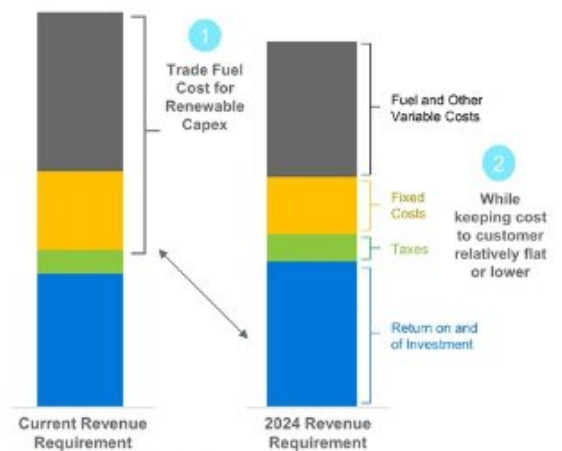
- ~\$90M rate base investment (includes developer carry) to be paid in 2023
- Will be recovered through base rate case

## WELL-POSITIONED 2023 RATE CASE

Rate Case planned to add renewable assets to NIPSCO rate base and immediately start passing savings to customers and returns to investors

- **2018 Rate Case set the foundation for execution of the replacement transition**
  - Resolved federal tax reform benefits being passed back to customers
  - Approved changes to depreciation and amortization schedules related to early retirements of coal-fired generation as submitted in the IRP (coal-fired generation to be fully depreciated by 2032)
  - Implemented new rate structure and service flexibility for large industrial customers that provide planning certainty for future capacity needs
- **2023 rate case is expected to transfer CPCN approved renewable investments into rate base (2H/2023)**
  - "Locking in" long-term customer, community and environmental benefits

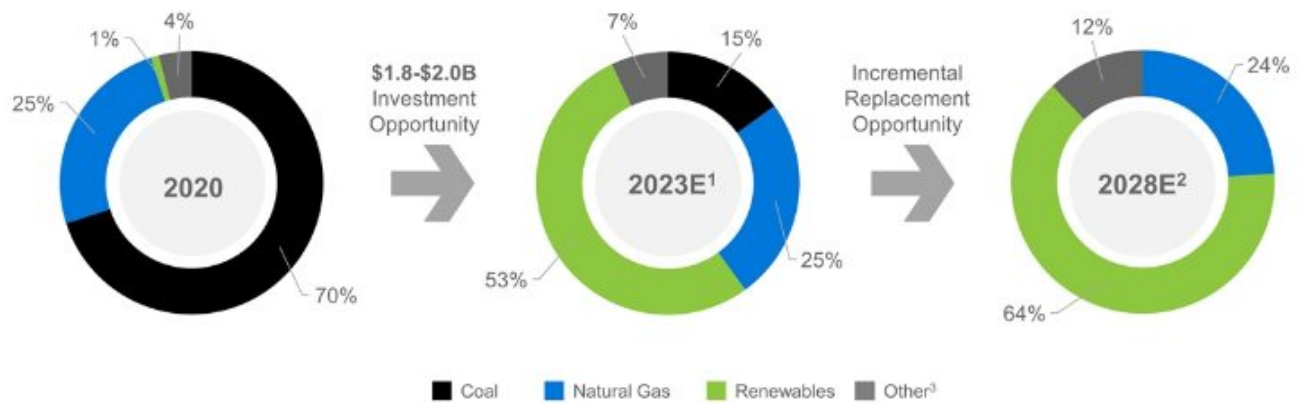
Illustrative Future Revenue Requirement\*



Significant reduction of annual maintenance and fuel costs provides long-term rate benefits to customers

## NIPSCO'S RENEWABLE-FOCUSED FUTURE SUPPLY MIX

The 2018 NIPSCO IRP outlines the path to retire 100% of coal assets by 2028 ...with replacement capacity pointing primarily to solar resources



Incremental generation opportunities beyond 2023 will be shaped by future IRPs

<sup>1</sup>Retirement of Schaffner Units 14/15/17/18; <sup>2</sup>Retirement of Michigan City Unit 12; <sup>3</sup>Other includes DSM

RENEWABLE PROJECT (VIDEO)

The logo for NiSource, featuring the word "NiSource" in a bold, blue, sans-serif font. The "Ni" is stylized with a sunburst or starburst pattern behind it. A registered trademark symbol (®) is located to the upper right of the word "Source".

**NiSource<sup>®</sup>**

# Financial Overview

Donald Brown  
EVP/CFO & President, NiSource  
Corporate Services





## STRONG FINANCIAL FOUNDATION FOR VALUE CREATION

### Strong Financial Foundation

- 100% Regulated and Stable Revenue Stream
- Diversified Footprint with Utility Businesses across Six Jurisdictions<sup>1</sup>
- Focused Business Strategy Highlighted by Significant Investment Opportunities
  - \$1.9B - \$2.2B of Planned Annual Growth, Safety & Modernization investments through 2024
  - \$1.8B - \$2.0B of Planned Renewable Generation investments primarily across 2022 and 2023
- Solid Liquidity with No Major Debt Maturities through the Planning Horizon

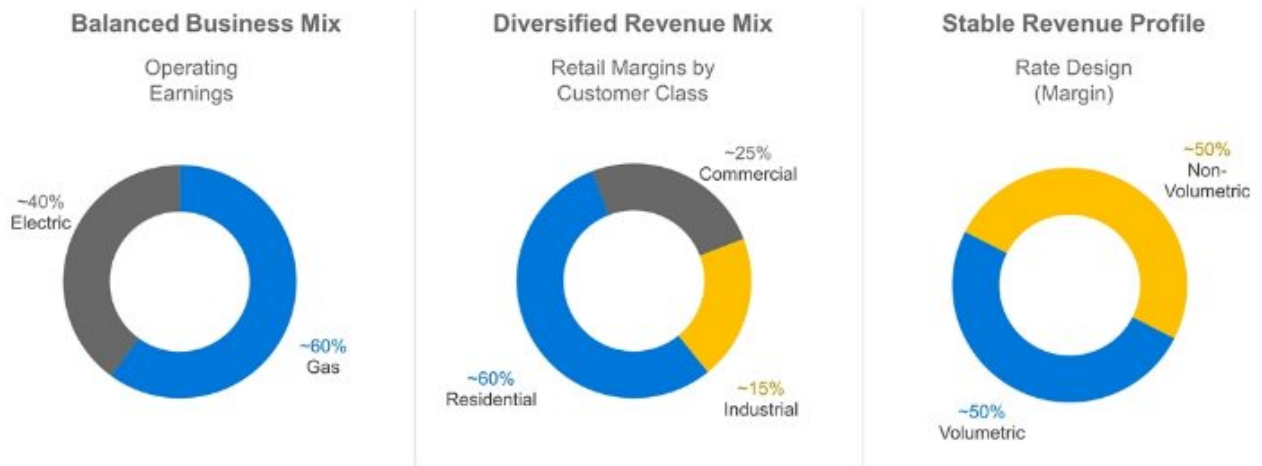
Driving

### Expected Value Creation

- Utility Rate Base CAGR of 10%–12% over 2021–2024
- NOEPS<sup>2</sup> CAGR of 7%–9% over 2021–2024
  - 5%–7% Near-Term Annual Growth (2021-2023)
- Annual Dividend Growth
  - Targeting 60%–70% Payout Ratio
- Commitment to Strengthening the Balance Sheet and Maintaining Current Investment Grade Credit Ratings
- Customer Value Advantage Enhanced by Sustainable Plan

<sup>1</sup>Operations are post sale of Columbia Gas of Massachusetts which is expected to close in October 2020; <sup>2</sup>Net Operating Earnings Per Share (Non-GAAP)

## DIVERSIFIED BUSINESS MIX<sup>1</sup>



Financial strength driven by strong regulatory constructs and balanced portfolio mix

<sup>1</sup>Data based on 2019 fiscal year results and excludes CMA.

## NISOURCE NEXT COST AND CAPABILITY ENHANCEMENTS

- NiSource Next initiatives and CMA sale projected to drive an ~8% reduction in O&M costs in 2021E from 2020E

### Cost Initiatives Under Way

- Voluntary Separation Program savings
- Improvements identified
  - Streamlined organizational structure
  - Evolved business services
  - Work standardization
  - Greater field mobility
  - Connected customer experience
- Modernization-driven fuel and cost reductions

Offset to future inflationary pressure

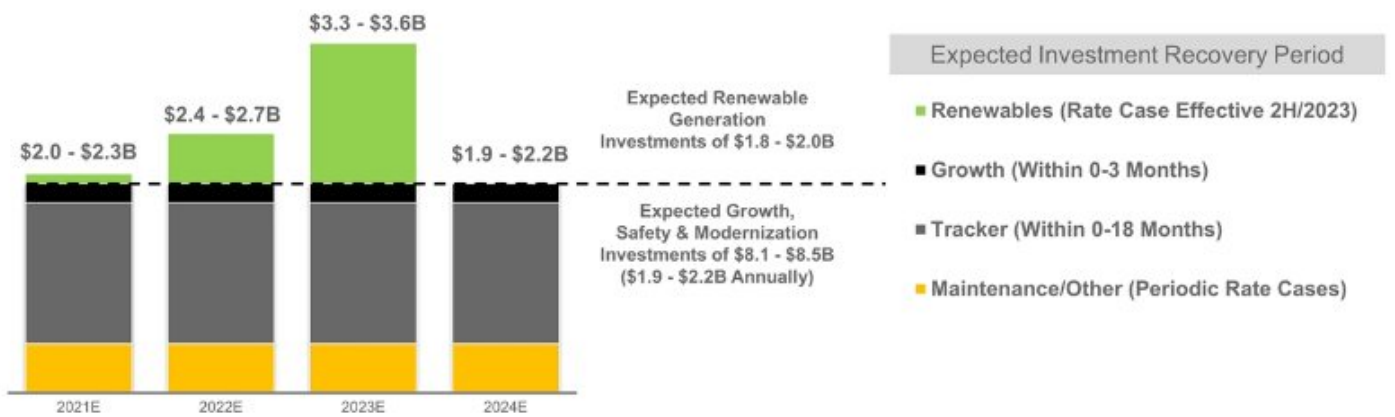


Relatively Flat  
Annual O&M  
(2021-2024)

Cost efforts intended to drive enhanced focus on safety, renewable energy,  
operational excellence and customer value

## 2021-2024 CAPITAL FORECAST

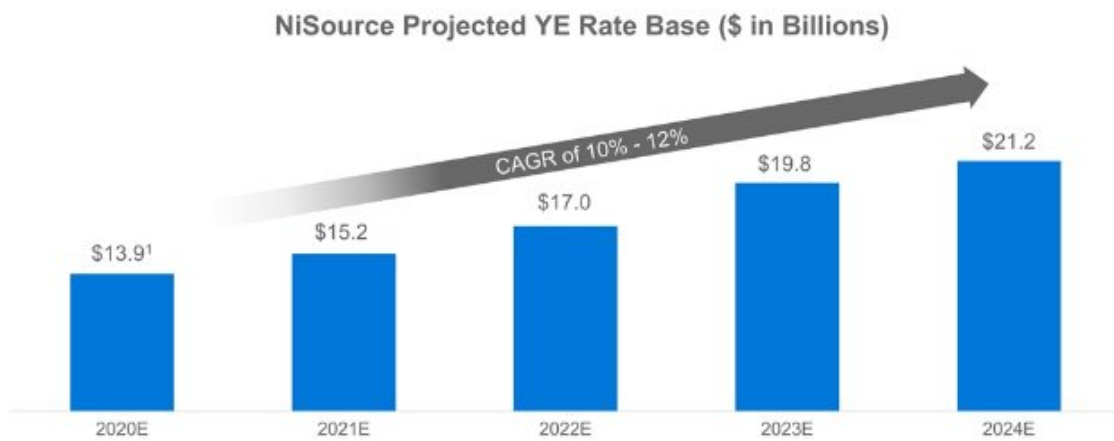
Investment opportunities expected to enhance system safety and reliability while driving shareholder value



More than 75% of Growth, Safety & Modernization Investments begin earning in less than 18 months

## CAPITAL INVESTMENT DRIVING ROBUST RATE BASE GROWTH

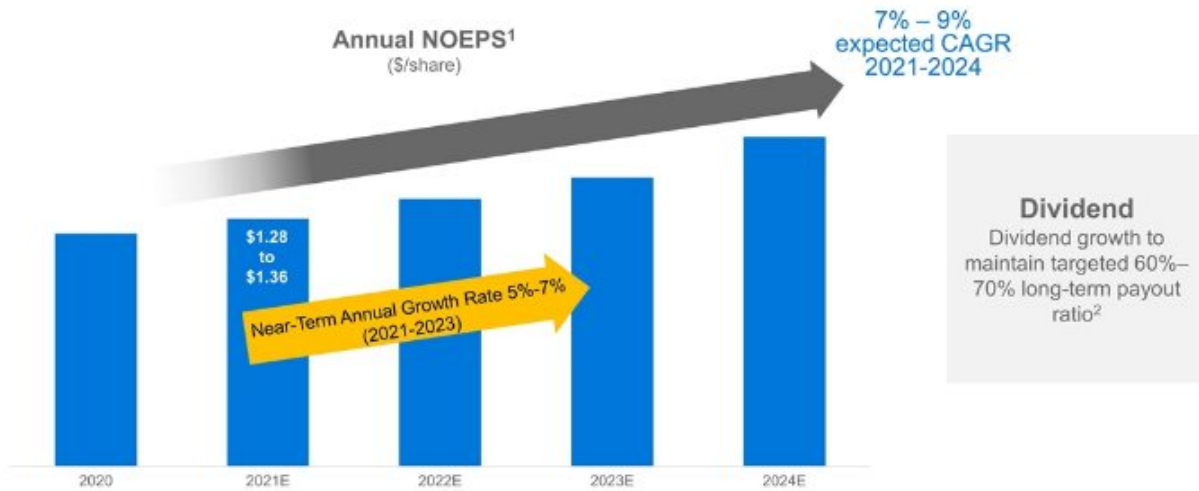
Planned Growth, Safety & Modernization and Renewable investments expected to drive robust rate base growth



Rate base growth balanced across jurisdictions and between gas and electric businesses

\*2020E rate base is post sale of Columbia Gas of Massachusetts which is expected to close in October 2020

## ROBUST CAPITAL INVESTMENT DRIVING NOEPS GROWTH



Long-term ~\$40B investment opportunity expected to drive continued NOEPS growth beyond 2024

<sup>1</sup>Net Operating Earnings Per Share (Non-GAAP)  
<sup>2</sup>Subject to board approval

## 2021E – 2024E FINANCING STRATEGY<sup>1</sup>

(\$ millions)	2021E	2022E	2023E	2024E
<b>Planned Annual Safety &amp; Modernization Investments</b>				
<b>Equity</b>				
ATM (At-the-Market)	\$200 - \$300 Annually			
ESPP/401K/Other	\$30 - \$50 Annually			
<b>Long-Term Debt</b>				
Incremental Long-Term Debt	\$500 - \$700 Annually			
<b>Planned Renewable Generation Investments (Targeting 60% Equity)</b>				
<b>Equity</b>				
Common Equity Block	\$500 - \$700 Total			
<b>Long-Term Debt</b>				
Incremental Long-Term Debt	\$500 - \$700 Total			
<b>Other Financing</b>				
Hybrids, Convertibles, etc.	\$600 - \$1,000 Total			

### Current Financing Plan ...

- All financing is included on our long-term growth commitments
- Reflects our focus on maintaining current investment grade credit rating
- Targets renewable investment financing (60% Equity / 40% Debt)
- Doesn't include potential portfolio optimization opportunities

Financing strategy targets long-term Adj. FFO<sup>2</sup>/total debt of ~14%-15%

<sup>1</sup>Current financing plan may change based on business developments  
<sup>2</sup>Adjusted funds from operations (FFO); represents Net Income adjusted for depreciation and amortization, loss on early extinguishment of debt and deferred taxes

## KEY BALANCE SHEET METRICS

Well positioned to maintain current investment grade credit ratings

<b><i>NiSource</i></b>	September 30, 2020 (Estimated)
Total Long-Term Debt (LTD)	\$9.1B
Weighted Average Rate (LTD)	3.68%
Weighted Average Maturity (LTD)	15.5 Years
Credit Ratings	Baa2 / BBB+ / BBB
Available Liquidity <sup>1</sup>	\$1.5B - \$1.6B

**No significant refinancing needs through 2024**

<sup>1</sup>Defined as cash plus available credit facility capacity.



# Closing

Joe Hamrock  
President, Chief Executive Officer and Director, NiSource



## OUR SUSTAINABLE APPROACH TO ESG



### Environmental

- \$1.8B-\$2.0B of planned renewable investments through 2023
- Expected to retire 100% of coal assets by 2028 and replace primarily with renewables
- Driving toward 90% reduction<sup>1</sup> in greenhouse gas emissions by 2030



### Social

- Transformation focused on customer safety and reliability
- Economically benefiting customers and communities
- Committed to engagement, diversity and inclusion from the boardroom through the organization and supplier network



### Governance

- Leadership enhancements support commitment to customer service and safety
- Diverse, skilled and independent Board recently refreshed
- Robust framework for strategy, risk management and oversight

<sup>1</sup>Compared to 2005 baseline

## ACCELERATING OUR PATH FORWARD

Leveraging our platform through a dedicated investment approach and relentless commitment to safety





# Appendix



## COLUMBIA GAS OF OHIO

- **Business Profile**
  - Largest LDC in Ohio (~1.5M customers)
  - ~20,200 miles of pipe
  - ~2,000 miles of bare steel and cast iron
  - ~\$3.2B rate base
- **Customer Focus**
  - Nationally recognized energy efficiency programs
  - Positive trending customer satisfaction
- **Rate Design**
  - Straight fixed-variable rate design (fully fixed residential distribution rate)
  - Bad debt tracked with full recovery
  - Several other O&M trackers
- **Economic Outlook / Customer Growth**
  - Stable economic environment with modest customer growth
  - Energy is central to state economy
- **Constructive Legislation**
  - House Bill 95
    - \* Utility modernization capital program authorized
  - House Bill 319
    - \* Infrastructure cost recovery for up to \$25.5M annually for economic development projects
  - Senate Bill 378
    - \* Underground protection and enforcement
- **Regulatory Environment and Growth Strategy**
  - Fully tracked annual Infrastructure Replacement Program (IRP) and Capital Expenditure Program (CEP)
  - Ability to defer costs associated with non-tracked investments
  - Public policy provides tools supporting investment for economic development and deferral of pipeline safety costs



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~\$10.6B
Annual Program Investment Range	\$540M - \$560M
Regulatory Treatment	Tracked
Tracker Filing Period	Historical – 12 months
Tracker Filing Date	February
Recovery Begins	May (IRP Rider), Sept. (CEP Rider)
Weighted Avg Regulatory Lag	< 12 Months
Authorized Program ROE	10.39%

## COLUMBIA GAS OF PENNSYLVANIA

- **Business Profile**
  - Third-Largest LDC in PA (~437K customers)
  - ~7,500 miles of pipe
  - ~1,200 miles of bare steel and cast iron
  - ~\$1.9B rate base
- **Customer Focus**
  - State leader in universal services, low-income initiatives, choice and energy efficiency programs
- **Rate Design**
  - ~27% of residential distribution rate fixed (assuming average customer usage)
  - Weather normalization adjustment for residential customers stabilizes revenue
- **Economic Outlook / Customer Growth**
  - Stable economic environment
  - Tariff program allows for modest customer growth
- **Constructive Legislation**
  - Act 11
  - Allows a gas utility to file a Distribution Service Improvement Charge (DSIC) and rate case with fully forecasted rate year
  - No limits for rate cases; DSIC increase limited to 5% of billed revenue
- **Regulatory Environment and Growth Strategy**
  - Recovery of infrastructure and other costs through base rate filings using a fully projected future test year
  - Tariff supports system expansion by providing limited main and service extensions at cost to customers



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~\$4.1B
Annual Program Investment Range	\$275M - \$340M
Regulatory Treatment	Base Rate Case
Test Year	Fully Projected Future Test – 12 months
Filing Date	1Q
Recovery Begins	Typically within 9 months of filing
Weighted Avg Regulatory Lag	None
Authorized ROE	Not Specified

## NIPSCO GAS (INDIANA)

- **Business Profile**
  - Largest LDC in Indiana (~829K customers)
  - ~17,500 miles of pipe
  - ~23 miles of bare steel
  - ~\$1.7B rate base
- **Customer Focus**
  - Lowest-cost gas provider in Indiana over the last 10 years
  - Fewest customer complaints in Indiana in the last five years
  - Continued rise in J.D. Power customer satisfaction survey
- **Rate Design**
  - ~50% of residential distribution rate fixed
  - Low income program fully tracked
  - Energy efficiency tracker
- **Economic Outlook / Customer Growth**
  - Typically stable economic environment, NIPSCO continues to work with customers impacted by the pandemic with extended payment plans. Favorable regulatory treatment related to bad debt expense
  - Customer-growth potential through rural extension opportunities
- **Constructive Legislation**
  - Senate Bill 582
    - Use of lowest bid year, timely rate cases, infrastructure investment tracking, rural extension for natural gas
  - House Bill 1470
    - Provides for flexibility for TDSIC plan length from five to 7 years, permits TDSIC to authorize multiple projects without specific numbers and locations, terminating a plan prior to expiration with ability to continue TDSIC treatment, and to allow companies to seek a new TDSIC plan.
    - Rate case required during term of each TDSIC plan
    - 2% revenue cap applies to aggregate of TDSIC plans
- **Regulatory Environment and Growth Strategy**
  - Six-year, \$949M Infrastructure Modernization Program with semi-annual tracker filings
  - Four-year \$99M capital and \$32M expense amounts for the Pipeline Safety Compliance Plan; and five-year \$223M capital amount for the PHMSA Compliance Plan in the Federally Mandated Program with semi-annual tracker filings
  - Regulatory construct encourages gas system expansion into rural areas

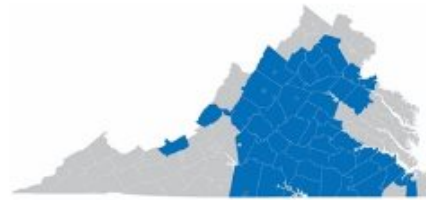


Anticipated Modernization Investment Summary	
Total Investment Opportunities	~ \$5.0B
Annual Program Investment Range	TDSIC: \$150M - \$200M; FMCA \$3M - \$43M
Regulatory Treatment	Tracked
Tracker Filing Period	Historical – Prior 6 Months
Tracker Filing Cadence	TDSIC Feb. and Aug; FMCA May and Nov
Recovery Begins	TDSIC Jul and Jan; FMCA Apr and Oct
Weighted Avg Regulatory Lag	< 12 Months
Authorized Program ROE	9.85%



## COLUMBIA GAS OF VIRGINIA

- **Business Profile**
  - Third-Largest LDC in VA (~274K customers)
  - ~ 5,300 miles of pipe
  - ~ 140 miles of bare steel
  - ~\$850M rate base
- **Customer Focus**
  - Broad residential, commercial and industrial portfolio
  - Industry-leading third-party damage rate
  - Top-tier J.D. Power customer satisfaction scores
- **Rate Design**
  - ~ 38% of residential distribution rate fixed
  - Revenue normalization adjustments provides full residential distribution revenue recovery
  - Energy conservation tracker
- **Economic Outlook / Customer Growth**
  - Stable economic environment
  - Customer growth opportunities through system expansion
  - Initiatives in place to promote customer conversions and growth
  - Year-over-year customer growth of 1.5%-2.0%
- **Constructive Legislation**
  - DIMP Act - Allows deferral of incremental O&M costs related to pipeline safety
  - SAVE Act - Allows recovery of investment on infrastructure replacement
  - CARE Act - Provides for energy efficiency programs and a decoupling adjustment
  - NEED Act - Allows deferral of infrastructure expansion costs and recovery of costs associated with upstream natural gas supply infrastructure
  - MAIN Act - Provides cost recovery for infrastructure expansion into unerved certificated areas
- **Regulatory Environment and Growth Strategy**
  - Forward-looking annual modernization / safety infrastructure investment tracker filings
  - Tracker filings supplemented by rate case filings with forward test year
  - Multi-Family program provides incentives for multi-family building development



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~ \$500M
Annual Program Investment Range	\$45M - \$70M
Regulatory Treatment	Tracked
Tracker Filing Period	Forward – 12 months
Tracker Filing Date	August
Recovery Begins	January
Weighted Avg Regulatory Lag	None
Authorized Program ROE	9.70%

## COLUMBIA GAS OF KENTUCKY

- **Business Profile**
  - Second-Largest Gas-Only LDC in KY (~137K customers)
  - ~ 2,800 miles of pipe
  - ~ 350 miles of bare steel and cast iron
  - ~ \$327M rate base
- **Customer Focus**
  - Top-tier customer satisfaction levels
- **Rate Design**
  - ~ 52% of residential distribution rate fixed
  - Weather normalization adjustment for residential and commercial customers stabilizes revenue
- **Economic Outlook / Customer Growth**
  - Stable economic environment with improving customer growth rates
- **Constructive Legislation**
  - House Bill 100
    - Governments may create and assess for special energy efficiency project districts
- **Regulatory Environment and Growth Strategy**
  - Safety Modification Replacement Program
    - Allows for full recovery of eligible pipeline replacement program costs not recovered in existing rates via a rider that permits the use of a forward-looking test year and is reconciled
    - Expanded to include recovery of eligible safety-related initiatives beginning in November 2019
    - There is no stated recovery limit on the tracker
  - PSC has authorized economic development extension tariff for high potential sites that require natural gas infrastructure
  - Annual modernization / safety infrastructure investment tracker filings
  - Tracker filings supplemented by rate case filings with forward-looking test year



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~ \$900M
Annual Program Investment Range	\$40M - \$50M
Regulatory Treatment	Tracked
Test Year	Forward – 12 months
Tracker Filing Date	October
Recovery Begins	January
Weighted Avg Regulatory Lag	None
Authorized Program ROE	9.50%

## COLUMBIA GAS OF MARYLAND

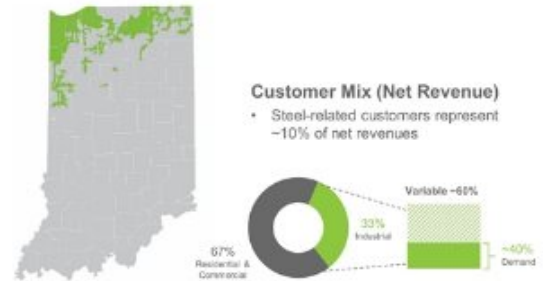
- **Business Profile**
  - Complementary to PA operations (~34K customers)
  - ~ 650 miles of pipe
  - ~ 51 miles of bare steel & cast iron
  - ~ \$149M rate base
- **Customer Focus**
  - Sustained industry-leading employee and system safety performance
- **Rate Design**
  - Revenue normalization adjustment provides full residential distribution revenue recovery
  - Energy efficiency tracker
- **Economic Outlook / Customer Growth**
  - Stable economic environment with modest customer growth
  - Tariff provisions allow for modest customer growth
- **Constructive Legislation**
  - STRIDE
    - Prospective cost recovery for age and condition investment
    - The surcharge cannot exceed \$2 per month on each residential bill
- **Regulatory Environment and Growth Strategy**
  - Forward-looking annual Infrastructure Replacement and Improvement Surcharge (IRIS) recovers age and condition investment
  - IRIS filings supplemented by periodic rate cases
  - Commission evaluating alternative rate designs



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~ \$230M
Annual Program Investment Range	\$25M - \$35M
Regulatory Treatment	Tracked
Tracker Filing Period	Forward – 12 Months
Tracker Filing Date	November
Recovery Begins	January
Weighted Avg Regulatory Lag	< 12 Months
Authorized Program ROE	9.60%

## INDIANA ELECTRIC (NIPSCO)

- **Business Profile**
  - Third-largest electric utility in Indiana (~ 475K customers)
  - Fully integrated electric utility
  - ~ 3,000 MW of environmentally compliant generation
  - ~10,000 distribution line miles
  - ~ 3,000 transmission line miles
  - ~ \$4.7B rate base
- **Customer Focus**
  - Fewest customer complaints in Indiana in the last five years
  - Rates are below the national average
  - Continued rise in J.D. Power customer satisfaction survey
- **Rate Design**
  - 100% fuel costs pass-through
  - Industrial customers – 40% demand charge weighted
- **Economic Outlook**
  - Challenging economic environment whereby NIPSCO is working with customers struggling due to the pandemic on extended payment plans and changes in energy demand
- **Constructive Legislation**
  - Senate Bill 560
    - Use of forward-looking test year, timely rate cases, and infrastructure investment tracking
    - Rate case required within seven years of original TDSIC filing
    - Rider cannot increase customer rates more than 2% of prior 12 months' revenues
  - House Bill 1470
    - Allow more flexibility for TDSIC plans by allowing projects that may rely on future inspections or details not available at the time the plan is filed
- **Regulatory Environment and Growth Strategy**
  - Your Energy Your Future generation transition plan to retire nearly 80% of our coal-fired generating units by 2023, and all of them by 2028, replacing them with lower-cost, cleaner energy sources, including wind and solar
  - Seven-Year – \$1.25B transmission and distribution infrastructure modernization program with semi-annual tracker filings



Anticipated Modernization Investment Summary	
Total Investment Opportunities	~ \$5B
Annual Program Investment Range	\$170M - \$230M
Regulatory Treatment	Modernization and Environmental Projects Tracked
Authorized ROE	9.75%

**FORM 8-K**

**AUGUST 26, 2020**

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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant To Section 13 OR 15(d)  
of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): August 26, 2020**

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**NiSource Inc.**

(Exact name of registrant as specified in its charter)

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**DE**  
(State or other jurisdiction  
of incorporation)

**001-16189**  
Commission  
File Number

**35-2108964**  
(I.R.S. Employer  
Identification No.)

**801 East 86th Avenue**  
**Merrillville, IN**  
(Address of principal executive offices)

**46410**  
(Zip Code)

**Registrant's telephone number, including area code (877) 647-5990**

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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 Stock, par value \$0.01 per share	NI	NYSE
Depository Shares, each representing a 1/1,000th ownership interest in a share of 6.50% Series B Fixed-Rate Reset Cumulative Redeemable Perpetual Preferred Stock, par value \$0.01 per share, liquidation preference \$25,000 per share and a 1/1,000th ownership interest in a share of Series B-1 Preferred Stock, par value \$0.01 per share, liquidation preference \$0.01 per share	NI PR B	NYSE

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

Emerging growth company

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

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**Item 8.01. Other Events.**

*Maximum Tender Offer*

On August 26, 2020, NiSource Inc. (“NiSource”) issued two press releases announcing the results and pricing of its previously announced tender offer (the “Maximum Tender Offer”) to purchase for cash up to an aggregate maximum repurchase amount of \$150,000,000 principal amount (the “Aggregate Maximum Repurchase Amount”) of the debt securities identified in the table below (collectively, the “Maximum Tender Offer Notes”). Copies of the two press releases are attached as Exhibits 99.1 and 99.2 to this Current Report on Form 8-K and are incorporated herein by reference.

The table below lists the aggregate principal amount of the Maximum Tender Offer Notes that were accepted for purchase and the aggregate principal amount that remains outstanding for each series of Maximum Tender Offer Notes for which notes were accepted for purchase.

Title of Notes	Principal Amount Accepted for Purchase	Principal Amount Outstanding After Maximum Tender Offer
6.25% Notes due 2040	\$97,398,000	\$152,602,000
5.95% Notes due 2041	\$52,603,000	\$347,397,000

The Maximum Tender Offer is scheduled to expire at 11:59 p.m., New York City time, on September 9, 2020, unless extended or earlier terminated. Maximum Tender Offer Notes in an amount equal to the Aggregate Maximum Repurchase Amount that were validly tendered and not validly withdrawn at or prior to 5:00 p.m., New York City time, on August 25, 2020 (the “Early Tender Date”), were accepted for purchase. Because the Maximum Tender Offer has been fully subscribed as of the Early Tender Date, holders who tender Maximum Tender Offer Notes after the Early Tender Date will not have any of their Maximum Tender Offer Notes accepted for purchase.

The aggregate purchase price for the Maximum Tender Offer Notes accepted for purchase in the Maximum Tender Offer as of the date hereof, including accrued interest and an early tender payment of \$30 per \$1,000 principal amount of Maximum Tender Offer Notes accepted for purchase, was \$225,951,535.66.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

Exhibit Number	Description
99.1	<a href="#">Press Release announcing the Early Tender Results of NiSource Inc.’s Tender Offer for its Maximum Tender Offer Notes, dated August 26, 2020</a>
99.2	<a href="#">Press Release announcing Pricing of NiSource Inc.’s Maximum Tender Offer, dated August 26, 2020</a>
104	Cover page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

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

NiSource Inc.  
\_\_\_\_\_  
(Registrant)

Date: August 26, 2020

By: \_\_\_\_\_  
/s/ Donald E. Brown  
Donald E. Brown  
Executive Vice President and Chief Financial Officer





August 26, 2020

**FOR ADDITIONAL INFORMATION**

**Media**

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**Investors**

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Sara Macioch  
Manager, Investor Relations  
(614) 460-4789  
smacioch@nisource.com

**NiSource Inc. Announces the Early Tender Results of its Tender Offer for its Maximum Tender Offer Notes**

MERRILLVILLE, Ind. – NiSource Inc. (“NiSource”) announced today the early tender results of its previously announced cash tender offer (the “Maximum Tender Offer”) to purchase up to an aggregate maximum repurchase amount of \$150,000,000 principal amount (the “Aggregate Maximum Repurchase Amount”) of its outstanding 6.25% Notes due 2040, 5.95% Notes due 2041, 5.80% Notes due 2042, 5.65% Notes due 2045 and 5.25% Notes due 2043 (the “Maximum Tender Offer Notes”). The terms and conditions of the Maximum Tender Offer remain unchanged and are described in the Offer to Purchase, dated August 12, 2020 (the “Offer to Purchase”).

The following table sets out, among other things, the aggregate principal amount of Maximum Tender Offer Notes that was validly tendered and not validly withdrawn prior to or at 5:00 p.m., New York City time, on August 25, 2020 (the “Early Tender Date”), as reported by D.F. King & Co., Inc., the Tender and Information Agent for the Maximum Tender Offer:

Title of Security	CUSIP/ISIN Numbers	Initial Principal Amount Outstanding	Acceptance Priority Level	Aggregate Principal Amount Tendered as of the Early Tender Date
6.25% Notes due 2040	65473QAW3/ US65473QAW33	\$250,000,000	1	\$ 97,398,000
5.95% Notes due 2041	65473QAX1/ US65473QAX16	\$400,000,000	2	\$ 223,450,000
5.80% Notes due 2042	65473QAZ6/ US65473QAZ63	\$250,000,000	3	\$ 107,351,000
5.65% Notes due 2045	65473QBD4/ US65473QBD43	\$500,000,000	4	\$ 155,847,000
5.25% Notes due 2043	65473QBB8/ US65473QBB86	\$500,000,000	5	\$ 131,030,000

The applicable Total Consideration for the Maximum Tender Offer Notes validly tendered and not validly withdrawn prior to or at the Early Tender Date will be determined in the manner described in the Offer to Purchase at 10:00 a.m., New York City time, on August 26, 2020, unless extended or earlier terminated by NiSource.

The Maximum Tender Offer has been fully subscribed as of the Early Tender Date. In accordance with the Aggregate Maximum Repurchase Amount and the Acceptance Priority Levels set forth in the table above, in each case as further described in the Offer to Purchase, all of the outstanding 6.25% Notes due 2040 validly tendered and not validly withdrawn prior to or at the Early Tender Date will be accepted for purchase. Any outstanding 5.95% Notes due 2041 validly tendered and not validly withdrawn will be subject to proration as further described

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in the Offer to Purchase. None of the outstanding 5.80% Notes due 2042, 5.65% Notes due 2045 and 5.25% Notes due 2043 tendered prior to or at the Early Tender Date will be accepted for purchase and will promptly be returned. No Maximum Tender Offer Notes tendered after the Early Tender Date will be accepted for purchase.

Holders of Maximum Tender Offer Notes accepted for purchase will receive the Total Consideration, which includes an Early Tender Payment (as defined in the Offer to Purchase) of \$30 per \$1,000 principal amount of Maximum Tender Offer Notes validly tendered by such holders and accepted for purchase by NiSource. Payments for Maximum Tender Offer Notes accepted for purchase will include accrued and unpaid interest from the last interest payment date applicable to the relevant series of Maximum Tender Offer Notes up to, but excluding, the Maximum Tender Early Settlement Date (as defined in the Offer to Purchase) for such Maximum Tender Offer Notes accepted for purchase. It is anticipated that the Maximum Tender Early Settlement Date for the accepted Maximum Tender Offer Notes will be August 27, 2020.

The withdrawal deadline for the Maximum Tender Offer was 5:00 p.m., New York City time, on August 25, 2020 and has not been extended. Accordingly, Maximum Tender Offer Notes tendered prior to or following the withdrawal deadline may not be withdrawn, subject to applicable law.

The Maximum Tender Offer will expire at 11:59 p.m., New York City time, on September 9, 2020, unless extended or earlier terminated by NiSource.

NiSource's obligation to accept for purchase and to pay for the Maximum Tender Offer Notes validly tendered and not validly withdrawn in the Maximum Tender Offer is subject to the satisfaction or waiver of a number of conditions described in the Offer to Purchase. The Maximum Tender Offer may be terminated or withdrawn in whole or terminated or withdrawn with respect to any series of the Maximum Tender Offer Notes, subject to applicable law. NiSource reserves the right, subject to applicable law, to: (i) waive any and all conditions to the Maximum Tender Offer, (ii) extend or terminate the Maximum Tender Offer, (iii) increase or decrease the Aggregate Maximum Repurchase Amount or (iv) otherwise amend the Maximum Tender Offer in any respect.

#### **Dealer Manager**

Credit Suisse Securities (USA) LLC is serving as Dealer Manager for the Maximum Tender Offer. Questions regarding the Maximum Tender Offer may be directed to Credit Suisse Securities (USA) LLC, toll-free at (800) 820-1653 or collect at (212) 325-2476. Requests for the Offer to Purchase or the documents incorporated by reference therein may be directed to D.F. King & Co., Inc., which is acting as Tender and Information Agent for the Maximum Tender Offer, at the following telephone numbers: banks and brokers, (212) 269-5550; all others toll-free at (877) 679-4107. Additionally, a copy of the Offer to Purchase (including the Notice of Guaranteed Delivery) is available at the following web address: [www.dfking.com/nisource](http://www.dfking.com/nisource).

This press release is neither an offer to purchase nor a solicitation of an offer to sell securities. No offer, solicitation, purchase or sale will be made in any jurisdiction in which such offer, solicitation, or sale would be unlawful. The Maximum Tender Offer is being made solely pursuant to terms and conditions set forth in the Offer to Purchase. This press release is being issued pursuant to and in accordance with Rule 134 under the Securities Act of 1933, as amended.

#### **About NiSource**

NiSource Inc. (NYSE: NI) is one of the largest fully-regulated utility companies in the United States, serving approximately 3.5 million natural gas customers and 500,000 electric customers across seven states through its local Columbia Gas and NIPSCO brands. Based in Merrillville, Indiana, NiSource's approximately 8,400 employees are focused on safely delivering reliable and affordable energy to our customers and communities we serve. Additional information about NiSource, its investments in modern infrastructure and systems, its commitments and its local brands can be found on its website.

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## Forward-Looking Statements

This press release contains “forward-looking statements” within the meaning of federal securities laws. Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially. Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include among other things, our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; our ability to execute our growth strategy; changes in general economic, capital and commodity market conditions; pension funding obligations; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; our ability to adapt to, and manage costs related to, advances in technology; any changes in our assumptions regarding the financial implications of a series of fires and explosions that occurred in Lawrence, Andover and North Andover, Massachusetts related to the delivery of natural gas by Columbia of Massachusetts in September 2018 (the “Greater Lawrence Incident”); compliance with the agreements entered into with the U.S. Attorney’s Office to settle the U.S. Attorney’s Office’s investigation relating to the Greater Lawrence Incident; the pending sale of the Columbia Gas of Massachusetts business, including the terms and closing conditions under the Asset Purchase Agreement; potential incidents and other operating risks associated with our business; continuing and potential future impacts from the COVID-19 pandemic; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; any damage to our reputation, including in connection with the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; fluctuations in demand from residential, commercial and industrial customers; economic conditions of certain industries; the success of NIPSCO’s electric generation strategy; the price of energy commodities and related transportation costs; the reliability of customers and suppliers to fulfill their payment and contractual obligations; potential impairment of goodwill; changes in taxation and accounting principles; the impact of an aging infrastructure; the impact of climate change; potential cyber-attacks; construction risks and natural gas costs and supply risks; extreme weather conditions; the attraction and retention of a qualified workforce; the ability of our subsidiaries to generate cash; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; and other matters in the “Risk Factors” section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as updated in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and our subsequent SEC filings. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time. A credit rating is not a recommendation to buy, sell or hold securities, and may be subject to revision or withdrawal at any time by the assigning rating organization. In addition, dividends are subject to board approval.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligation to, and expressly disclaim any such obligation to, update or revise any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events or changes to the future results over time or otherwise, except as required by law.

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NEWS

FOR IMMEDIATE RELEASE



WWW.NISOURCE.COM

August 26, 2020

**FOR ADDITIONAL INFORMATION**

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**NiSource Inc. Announces Pricing of its Maximum Tender Offer**

MERRILLVILLE, Ind. – NiSource Inc. (“NiSource”) announced today the pricing terms of its previously announced cash tender offer (the “Maximum Tender Offer”) for up to \$150,000,000 aggregate maximum repurchase amount (the “Aggregate Maximum Repurchase Amount”) of its outstanding 6.25% Notes due 2040, 5.95% Notes due 2041, 5.80% Notes due 2042, 5.65% Notes due 2045 and 5.25% Notes due 2043 (the “Maximum Tender Offer Notes”). The terms and conditions of the Maximum Tender Offer are described in the Offer to Purchase, dated August 12, 2020 (the “Offer to Purchase”).

As of 5:00 p.m., New York City time, on August 25, 2020 (the “Early Tender Date”), as reported by D.F. King & Co., Inc., the tender and information agent for the Maximum Tender Offer, the principal amounts of the Maximum Tender Offer Notes listed in the table below had been validly tendered and not validly withdrawn. The following table sets out, among other things, the applicable Total Consideration for each \$1,000 principal amount of Maximum Tender Offer Notes accepted for purchase:

Title of Security	CUSIP/ISIN Numbers	Initial Principal Amount	Acceptance Priority Level	U.S. Treasury Reference Security	Reference Yield	Fixed Spread	Repurchase Yield	Principal Amount Tendered and Accepted	Total Consideration (per \$1,000 principal amount) <sup>(a)</sup>
6.25% Notes due 2040	65473QAW3/ US65473QAW33	\$250,000,000	1	1.25% U.S. Treasury due 5/15/2050	1.423%	+150 bps	2.923%	\$97,398,000	\$1,506.63
5.95% Notes due 2041 <sup>(b)</sup>	65473QAX1/ US65473QAX16	\$400,000,000	2	1.25% U.S. Treasury due 5/15/2050	1.423%	+145 bps	2.873%	\$52,603,000	\$1,470.74
5.80% Notes due 2042 <sup>(c)</sup>	65473QAZ6/ US65473QAZ63	\$250,000,000	3	1.25% U.S. Treasury due 5/15/2050	— %	+150 bps	— %	\$—	\$—
5.65% Notes due 2045 <sup>(c)</sup>	65473QBD4/ US65473QBD43	\$500,000,000	4	1.25% U.S. Treasury due 5/15/2050	— %	+155 bps	— %	\$—	\$—
5.25% Notes due 2043 <sup>(c)</sup>	65473QBB8/ US65473QBB86	\$500,000,000	5	1.25% U.S. Treasury due 5/15/2050	— %	+155 bps	— %	\$—	\$—

- (a) The Total Consideration for the Maximum Tender Offer Notes validly tendered prior to or at the Early Tender Date and not validly withdrawn and accepted for purchase is calculated using the fixed spread shown in the table above and includes an Early Tender Payment (as defined in the Offer to Purchase) of \$30 per \$1,000 principal amount.
- (b) Any outstanding 5.95% Notes due 2041 validly tendered and not validly withdrawn will be subject to proration as further described in the Offer to Purchase.
- (c) None of the outstanding Notes in this series will be accepted for purchase.

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The Total Consideration was calculated in the manner described in the Offer to Purchase by reference to a fixed spread specified in the table above plus the yield to par call date or yield to maturity, as applicable, based on the bid-side price of the applicable U.S. Treasury Reference Security specified in the table above at 10:00 a.m., New York City time, on August 26, 2020. The Total Consideration also includes the applicable Early Tender Payment (as shown in footnote (a) to the table above for each series of Maximum Tender Offer Notes) for each \$1,000 principal amount of such series of Maximum Tender Offer Notes tendered prior to or at the Early Tender Date and accepted for purchase. Payments for Maximum Tender Offer Notes accepted for purchase will include accrued and unpaid interest from the last interest payment date applicable to the relevant series of Maximum Tender Offer Notes up to, but excluding, the Maximum Tender Early Settlement Date (as defined in the Offer to Purchase) for such series of Maximum Tender Offer Notes accepted for purchase. It is anticipated that the Maximum Tender Early Settlement Date for the accepted Maximum Tender Offer Notes will be August 27, 2020.

The withdrawal deadline for the Maximum Tender Offer was 5:00 p.m., New York City time, on August 25, 2020 and has not been extended. Accordingly, Maximum Tender Offer Notes tendered prior to or following the withdrawal deadline may not be withdrawn, subject to applicable law.

The Maximum Tender Offer will expire at 11:59 p.m., New York City time, on September 9, 2020, unless extended or earlier terminated by NiSource.

NiSource's obligation to accept for purchase and to pay for the Maximum Tender Offer Notes validly tendered and not validly withdrawn in the Maximum Tender Offer is subject to the satisfaction or waiver of a number of conditions described in the Offer to Purchase. The Maximum Tender Offer may be terminated or withdrawn in whole or terminated or withdrawn with respect to any series of Maximum Tender Offer Notes, subject to applicable law. NiSource reserves the right, subject to applicable law, to: (i) waive any and all conditions to the Maximum Tender Offer, (ii) extend or terminate the Maximum Tender Offer, (iii) increase or decrease the Aggregate Maximum Repurchase Amount or (iv) otherwise amend the Maximum Tender Offer in any respect.

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## Forward-Looking Statements

This press release contains "forward-looking statements" within the meaning of federal securities laws. Investors and prospective investors should understand that many factors govern whether any forward-looking statement contained herein will be or can be realized. Any one of those factors could cause actual results to differ materially from those projected. These forward-looking statements include, but are not limited to, statements concerning our plans, strategies, objectives, expected performance, expenditures, recovery of expenditures through rates, stated on either a consolidated or segment basis, and any and all underlying assumptions and other statements that are other than statements of historical fact. All forward-looking statements are based on assumptions that management believes to be reasonable; however, there can be no assurance that actual results will not differ materially. Factors that could cause actual results to differ materially from the projections, forecasts, estimates and expectations discussed in this press release include among other things, our debt obligations; any changes to our credit rating or the credit rating of certain of our subsidiaries; our ability to execute our growth strategy; changes in general economic, capital and commodity market conditions; pension funding obligations; economic regulation and the impact of regulatory rate reviews; our ability to obtain expected financial or regulatory outcomes; our ability to adapt to, and manage costs related to, advances in technology; any changes in our assumptions regarding the financial implications of a series of fires and explosions that occurred in Lawrence, Andover and North Andover, Massachusetts related to the delivery of natural gas by Columbia of Massachusetts in September 2018 (the "Greater Lawrence Incident"); compliance with the agreements entered into with the U.S. Attorney's Office to settle the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident; the pending sale of the Columbia Gas of Massachusetts business, including the terms and closing conditions under the Asset Purchase Agreement; potential incidents and other operating risks associated with our business; continuing and potential future impacts from the COVID-19 pandemic; our ability to obtain sufficient insurance coverage and whether such coverage will protect us against significant losses; the outcome of legal and regulatory proceedings, investigations, incidents, claims and litigation; any damage to our reputation, including in connection with the Greater Lawrence Incident; compliance with applicable laws, regulations and tariffs; compliance with environmental laws and the costs of associated liabilities; fluctuations in demand from residential, commercial and industrial customers; economic conditions of certain industries; the success of NIPSCO's electric generation strategy; the price of energy commodities and related transportation costs; the reliability of customers and suppliers to fulfill their payment and contractual obligations; potential impairment of goodwill; changes in taxation and accounting principles; the impact of an aging infrastructure; the impact of climate change; potential cyber-attacks; construction risks and natural gas costs and supply risks; extreme weather conditions; the attraction and retention of a qualified workforce; the ability of our subsidiaries to generate cash; our ability to manage new initiatives and organizational changes; the performance of third-party suppliers and service providers; changes in the method for determining LIBOR and the potential replacement of the LIBOR benchmark interest rate; and other matters in the "Risk Factors" section of our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as updated in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and our subsequent SEC filings. In addition, the relative contributions to profitability by each business segment, and the assumptions underlying the forward-looking statements relating thereto, may change over time. A credit rating is not a recommendation to buy, sell or hold securities, and may be subject to revision or withdrawal at any time by the assigning rating organization. In addition, dividends are subject to board approval.

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